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ABSTRACT

This book explains the development and current workings of the American and Maryland judiciaries. An interview with the Honorable Arthur M. Monty Anhalt of the Circuit Court of Prince George's County, a long-time advocate of law education, presents a realistic view of the principles by which jurists operate in their daily effort to impart justice. Abraham A. Dash provides an essay on the Maryland judiciary that describes the common law tradition, the pre-revolutionary courts of Maryland, the judicial consequences of the revolution, the development of Maryland's present judicial structure, and the Maryland courts today. A section on teaching methods elaborates the case-study, adversarial, and mock-trial approaches to teaching legal concepts, including rationale and procedures. Seven lesson plans introduce the structure of the Maryland court system, the physical setting of the courtroom, trial participants, procedure, jury selection, a court house field trip, and a debriefing for the visit. The lesson plans provide handouts and quizzes. The Constitution of Maryland and the U.S. Constitution are included in the appendices. (JD)

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UNDERSTANDING THE JUDICIAL BRANCH
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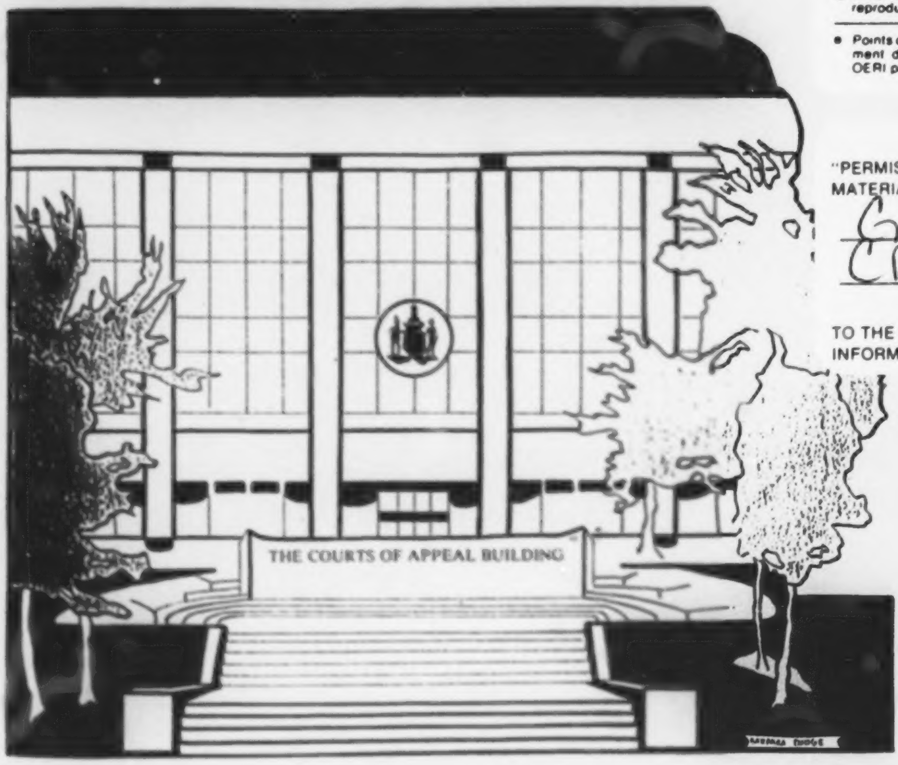
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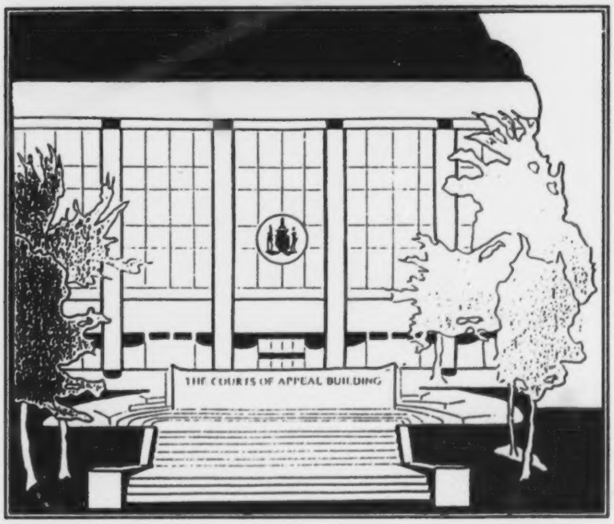
THE COURTS OF APPEAL BUILDING

With Classroom Activities
and
Sample Lesson Plans

An Interview with
The Honorable Arthur M. Monty Ahalt
The Circuit Court of Prince George's County, Maryland

An Essay by
Professor Abraham Dash
The University of Maryland
School of Law

Prepared by
The Citizenship Law-Related Education Program for the Schools of Maryland
Ellery M. Miller, Jr. (Rick), Director

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We further acknowledge the contributions of the Honorable Arthur M. Monty Ahalt and Professor Abraham Dash. Judge Ahalt adds to his notable tenure on the bench, his long-standing efforts to promote law education in Maryland. Professor Dash is recognized as one of the nation's foremost legal scholars and his insights and influence in the legal profession is at the very least substantial. Their willingness to take time from their already burdened schedules to provide the content for this publication is a tribute to their dedication to the law, the citizens of Maryland, and to the precepts of our living democracy. We cannot adequately convey our gratitude to them.

We would also like to thank John Bailer, Diane Banks, and Don Zimmerman for the development of the lesson plans contained in this publication.

Ellery M. Miller (Rick)
Director, CLREP

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PREFACE

Recently it has become apparent that Maryland educators involved in teaching law-related education topics are in need of a clear, concise reference which addresses the most fundamental questions of our legal system. With this in mind, the Citizenship Law-Related Education Program for the Schools of Maryland is pleased to present the following publication which provides information on the development, and current workings of the American and Maryland Judiciary. Although the materials here may seem elementary to some, an understanding of these very basic ideals is a necessary prerequisite to a comprehensive understanding of the complexities of our judiciary and legal systems.

Our legal system has deep roots and traditions that affect the procedures and policies of courts today. The law is pervasive and ever present in the lives of Americans and we are the most law intensive nation in history. Yet, Americans often times overlook the importance of the law in creating and protecting our society. The goal of this publication and of the Citizenship Law-Related Education Program for the Schools of Maryland is to enhance understanding and appreciation of the law and our legal traditions and system so as to assure the continuance of the freedoms we enjoy.

Understanding the Judicial Branch of Government
A Candid Conversation from a Judge's Chambers

The Honorable Arthur M. Monty Ahalt
The Circuit Court of Prince George's County

Recently, members of the Citizenship Law-Related Education Program for the Schools of Maryland had an opportunity to speak with the Honorable Monty Ahalt in an informal and candid session in the Judge's chambers in Upper Marlboro, Maryland. In developing a publication on the Judiciary, the staff of CLREP felt that it would be most appropriate to interview Judge Ahalt, not only in his capacity as Judge of the Circuit Court of Maryland but also in his capacity as a leader in the field of law education.

As a member of the Young Lawyers Section of the Maryland State Bar Association and prior to his appointment to the bench, he, along with a number of colleagues and concerned educators, joined forces to create the Citizenship Law-Related Education Program for the Schools of Maryland.

For the past twenty years Judge Ahalt has dedicated great energy and effort to the education of our young people about our Constitution, our laws, and the legal process. He has continued his advocacy for law education during his tenure on the circuit bench and, he brings a special perspective and understanding of the judicial branch of government to the advancement of CLREP objectives.

Judge Ahalt, as a long-time advocate of law education in the State of Maryland, presented a very concise and realistic view of the principles by which our jurists operate in their daily effort to impart justice and to assure the "blessings of liberty" for all Americans.

The CLREP staff is pleased with our association and long-standing relationship with Judge Ahalt and appreciates his continuing support and endorsement.

Q: *Your Honor, as a nation we are often referred to as the "Melting Pot" or sometimes as the nation of immigrants. Do you find this an adequate assessment of the U.S.?*

A: As a nation, the United States can be defined in a variety of ways. However, due to the multiplicity and diversity of America, any definition will be intrinsically inadequate. Perhaps the simplest and most comprehensive definition of the United States is that we are a nation of laws and not of men. We are not subject to the whims and caprice of a monarch, nor are our elected officials and governmental institutions liable to dissolution for making unpopular decisions.

We are the most law-intensive nation in history. Yet Americans have little understanding of our government and the law and the protection they provide to the "blessings of liberty" we all enjoy.

Q: *What is the basic structure of the U. S. Government?*

A: The government of the United States and each of its individual states is a constitutional form of government. That is, the form of government determined by a constitution which is the product of the collective will of the people.

The Constitution of the United States and of each individual state provides for a government which is comprised of three branches: the legislative, the executive, and the judicial. Each branch has a distinct responsibility that is separate and apart from each other branch. The body of law which defines the responsibilities of each branch of the government is known as "separation of powers." Virtually all disputes between the branches occur when a branch attempts to exercise a power belonging to another branch.

Q: *Briefly remind us, if you will, of the basic structure of our government.*

A:[*] The legislative branch of the government has the responsibility of making law. Periodically, we elect representatives to state legislatures, county councils, city councils, and the United States Congress to make laws on our behalf. These individuals are elected by popular election and their responsibility is to make law in accordance with our popular will. If we are satisfied with the job that they do, we reelect them to office. If we are unsatisfied by the job that they do, we elect others to perform that function on our behalf. The legislative branch of the government has no other primary function. That is, it is not the function of the legislative branch of the government to organize and implement or enforce the law, nor is it the function of the legislative branch of the government to resolve disputes.

The executive branch of the government has the responsibility of organizing the laws enacted by the legislative branch of the government and implementing and enforcing those laws. The people elect representatives to do that on their behalf. These representatives are known as presidents, governors, county executives, and mayors. To the extent that those individuals organize, implement, and enforce the law in accordance with popular will, they are elected to office. To the extent that they do not organize, implement, and enforce the law in accordance with the popular will, others are elected to do their job. The executive branch of the government does not have the function of making the law nor does it have the function of resolving disputes.

The judicial branch of the government has the responsibility of resolving disputes that citizens of the community have with one another. They, of course, are charged with the responsibility of resolving those disputes in a fair, just, impartial, and expeditious fashion. In many instances, they must resolve disputes in accordance with rules and regulations enacted by the legislative branch of the government or enforced by the executive branch of the government.

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[*] U.S. Constitution, Articles I - III
Maryland Constitution, Article 8

The judicial branch of the government does not have the responsibility of making law as that is the responsibility of the legislative branch of the government, nor does the judicial branch of the government have the function of enforcing or implementing the law because that is the function of the executive branch of the government. To a limited extent, when a court resolves a dispute, that resolution stands as a precedent for the resolution of similar disputes. To that extent, it is said that the judicial branch of the government makes law. However, it is the consequence of resolving a dispute as opposed to initial law-making.

Different governmental entities affect our daily lives. Those governments typically affecting our daily lives are the federal government, the state government, and the local government (county or city).

With respect to any given course of conduct, that conduct may be affected at the same time in some fashion by the legislative branch of the federal government, by the legislative branch of the state government, by the legislative branch of the local government. In a like fashion, any given course of conduct might at the same time be affected by the executive branch of the federal government, the executive branch of the state government, or the executive branch of the local government. To the same extent, any given course of conduct might involve a dispute which could be resolved in a federal court, a state court, or a local court.

Q: *You speak of the dispute resolution capabilities of the Judiciary. Before we continue, can you describe the structure of our Judiciary as it exists today?*

A: The judicial branch of the government is specifically composed of a federal court, a state court, and sometimes, in rare instances, a local court.

The federal court is composed of the federal magistrate, the United States federal district court, the United States Circuit Court of Appeals, and the Supreme Court of the United States. Federal courts resolve disputes arising over an application of federal law, usually enacted by Congress or expressed in the United States Constitution.

Q: *What is the specific role of each federal court?*

A: The federal magistrate has jurisdiction of a limited nature. Its jurisdiction includes minor criminal offenses and minor traffic offenses. The United States district court is a court of general trial jurisdiction. Its jurisdiction includes questions mainly involving major civil and criminal disputes. It is at this court where people are entitled to a federal jury trial. The Circuit Court of Appeals is an appellate court of unlimited jurisdiction. That is, almost all disputes decided in the district court may be appealed as matter of right to this court. The Supreme Court is a court of limited appellate jurisdiction. It can hear cases only when it decides that the issue presented is of such public importance that it is necessary to be decided for the public interest. The Supreme Court is known as a certiorari court. Certiorari is a common law writ which by limited definition means "send me your papers," a command which is directed to a lower court so as to review its decisions.

Q: *What types of cases do Maryland courts hear?*

A:* The district court system is composed of a trial court of limited jurisdiction. Its jurisdiction is limited to minor criminal offenses, minor motor vehicle offenses, and civil cases involving questions or issues under $10,000.00. The circuit court is a court of general trial jurisdiction. It is the court which hears major criminal and civil disputes and is the court where one exercises the right to a state jury trial. In addition, the circuit court resolves disputes concerning land, marriage, and estates. The Court of Special Appeals is a court of unlimited appellate jurisdiction and its function is to determine appeals from the circuit court. Issues of appeal are limited to questions of legal error that have occurred in the circuit court. Almost all cases which are heard in the circuit court may be appealed as a matter of right to the Court of Special Appeals.

The Court of Appeals, Maryland's highest court, is a court of limited jurisdiction. It decides only those cases that the Court of Appeals determines are of public importance and necessity to be decided. Again, being an appellate court, it hears only cases involving legal error committed in a trial before a circuit court.

Q: *How many people work in the court system?*

A:* There are seven Court of Appeals judges, thirteen Court of Special Appeals judges, 109 circuit court judges and 90 district court judges in the State of Maryland.

The judicial branch of the government is physically composed of four thousand courthouses in the United States. Forty of those are located in the State of Maryland. There are fifteen thousand judges in the United States and 219 of those judges are located in the State of Maryland. There are 112,000 clerks in the United States courthouses, there are 2,700 of those clerks located in the State of Maryland. There are 620,000 lawyers in the United States, 17,000 of those lawyers are located in the State of Maryland.

Q: *Could you compare the judiciary budget with the executive and legislative budgets?*

A: The total Maryland state government budget is 11 billion dollars. Of that 11 billion dollars the total state judiciary budget is 71 million dollars.

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*Maryland Constitution, Article IV
Maryland Code Ann. Courts and Judicial Proceedings title I

*Annual Report, Maryland Judiciary Published Annually by the Administrative Office of the Courts

Q: *What forms the basis for the Maryland legal system?*

A:[*] The English "Common Law" is rooted in the recording of decisional law that developed throughout post-Magna Carta English history. Thus, the decision in one case stands as a rule for the decisions of like cases. Put in another way, that would mean that decisions in prior cases stand as a law or a rule of conduct for like future cases.

The English "Common Law" has the force and effect of the rule of law simply because the Maryland Declaration of Rights says it is the rule of law. The Declaration of Rights provides in Article 5 as follows:

"That the Inhabitants of Maryland are entitled to the "Common Law" of England, and the trial by Jury, according to the course of that Law, and to the benefit of such of the English statutes as existed on the Fourth day of July, seventeen hundred and seventy-six; and which, by experience, have been found applicable to their local and other circumstances, and have been introduced, used and practiced by the courts of Law or Equity; and also of all Acts of Assembly in force on the first day of June, eighteen hundred and sixty-seven..."

Q: *What is the primary goal of the judicial branch?*

A: The function of the judicial branch of the government is to bring disputes to a final resolution. This process of dispute resolution, of course, must be done in a fair, just, impartial and expeditious fashion. Each of these vital components must be weighed equally:

- Fairness involves an application of the concepts of due process, equality, and the opportunity to be heard.
- Justice requires the application of the concepts of a search for the truth.
- Impartiality requires the application of the concepts of unbiased or unprejudiced action.
- Expedition requires application of the concepts of speed and efficiency. Justice delayed is justice denied.

Q: *How does the judicial branch resolve disputes?*

A: The basic method by which disputes are brought to a final resolution is through the presentation of evidence and law supporting competing sides of a dispute in a court room before a judge or a jury.

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[*] 2 W. Blackstone Commentaries of the Nature of Laws in General

All of these concepts are equally important to the resolution of disputes. All of these concepts must be applied with a sense of consciousness as to the existence of each other. Thus, when one considers whether or not a case is being resolved fairly, one must necessarily consider whether the dispute is being resolved justly, impartially and expeditiously. It is fair to say that in the resolution of disputes, oftentimes the concepts of fairness, justice, impartiality and expedition have an inherent competition with one another. Therefore, the resolution to disputes requires a constant balancing of the importance of each concept as the dispute proceeds to be resolved.

In order to resolve disputes, there are two issues which must be addressed. First, one must address a determination of disputed facts. Secondly, one must determine a disputed law. In most cases where a dispute arises, it is necessary for the court to exercise its dispute-resolving function in a fair, just, impartial and expeditious fashion with regard to questions of disputed facts. Less often, a court must resolve disputed questions of law.

Q: *How does the court decide between two versions of fact?*

A: The disputed fact resolution process is a process which involves a fact-finding process. Fact-finding processes take place in the judicial branch of the government, either by a judge or by a jury. Juries take the size of 12 or 6, depending on the jurisdiction, and depending on the court. In order for a court or jury to resolve disputes of fact, it is necessary for the court to apply a burden of proof. This is necessary because, collectively as a community, we are incapable of determining matters which have occurred some time ago to any degree of certainty. The court system uses three burdens of proof in resolving its disputes. A burden of proof requires a fact-finding body to look at the evidence in terms of its believability (truth) and in terms of its persuasiveness (weight). Generally speaking, burdens of proof require a higher quality and higher quantity of evidence as the consequence of the judgment of the court increases. So, in a civil case where the consequence of the judgment is a money damage award, the amount and quality of the evidence is the least. On the other hand, in a criminal case, where the consequence of the judgment is guilt or innocence of a crime and, consequently, a potential loss of freedom, the quantity and quality of the evidence is the highest.

Q: *Please expand on the "burden of proof" to which you refer.*

A:* The three burdens of proof that are given application by fact-finding bodies are as follows:

Proof by a preponderance of the evidence;
Proof by clear and convincing evidence; and
Proof beyond a reasonable doubt.

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*Maryland Civil Patterned Instructions 1:1 and 1:8
Maryland Criminal Patterned Jury Instructions 1:01 and 1:08

Proof by a preponderance of the evidence simply means 'more likely so than not' or 'more probable than not.' If you were to attempt to visualize the concept of preponderance of evidence, you might visualize balanced scales of weight. If those balanced scales of weight were in a state of even balance, you would not be justified in concluding that a party had proven their case by a preponderance of the evidence, or more likely so than not. If, however, you were able to say that one side of the scale tilted, however so slightly out of that state of even balance, then you would be justified in saying that a party had proven their case by a preponderance of the evidence, or more likely so than not so.

Proof by clear and convincing evidence requires a moving party to prove their case by evidence that is clear, in the sense that it is easily understood, and convincing, in the sense that it has some extraordinary probative force (the ability to establish the existence of fact). If you were to again look at the visual concept of the balanced scales of weight, it would require those balanced scales of weight to be moved to beyond that mere out-of-balance state to a state where the evidence could be said to be clear, in the sense that it is easily understood, and convincing, in the sense of some extraordinary probative force.

Proof beyond a reasonable doubt means that the evidence of the proposition asserted is so conclusive and complete as to remove any doubts. It must not be capable of question by reason. The words 'reasonable doubt' cannot be based upon whim, caprice or arbitrariness. It must be based on reason, not speculation. It must be based on reason generated from the evidence. If you were again to visualize the balanced scales of weight, they would have to be tilted beyond the clear and convincing stage to a point where there was no doubt based upon reason.

Q: *What standards does the court apply to determine if a "burden" has been met?*

A: The application of any of the burdens of proof requires the application of the concepts of advocacy or persuasion, and truthfulness or credibility.

Advocacy and persuasion refer to the ability of the evidence to be convincing or persuasive. The fact-finder is persuaded by the evidence when the evidence has more weight or greater convincing force. The fact-finder is persuaded by the evidence when the evidence has a higher probative force. The fact-finder is persuaded by the evidence when it is compelling.

Issues of credibility or truthfulness are probably best categorized by the use of the word 'believability.' That involves questions of determining whether evidence will be believed or disbelieved. Issues of believability are issues which involve more than simple questions of determining the issue of purposeful lies under oath, although they do include such issues. Issues of believability more often require a determination of issues centered around whether a particular piece of evidence or testimony is surrounded by an indication of a desire for truthfulness and an ability for truthfulness.

Desire for truthfulness refers to the issue of bias or prejudice, *i.e.*, in the sense of a witness having an interest in the outcome of the case or dispute. Bias and prejudice in this sense is not thought of in other typical senses of bias or prejudice as a result, for instance of race, creed or religion. Bias or prejudice is thought of in this instance in context of whether an individual has lost their desire by virtue of their background to come into court and tell the truth.

Ability to tell the truth refers to such things as whether a witness' testimony is reasonable or unreasonable; whether their testimony is probable or improbable; whether a witness had the opportunity to see what he or she is testifying to. So it is important to determine whether a witness' testimony is supported or contradicted by other credible evidence that may be found to exist.

Disputes of fact, then, are determined in accordance with the particular burden of proof that is applicable to the type of case being resolved. That resolution of the disputed facts must be done in a fair, just, impartial, and expeditious fashion.

Q: *What is involved in determining disputes of law?*

A: Determinations of disputes of law are the second function of the court. It is important to recognize that it is not a function of the judicial branch of the government to make laws. However, because disputes are resolved, and evidence of those resolved disputes are kept and maintained in terms of written decisions, a prior dispute resolution can and does stand as an expression of the law.

This process of recording prior decision results in the conclusion by some that the court has made law. This view is an oversimplification of the process because the very nature of the decision-making process is to resolve disputes concerning the law. Thus, when a court resolves disputes concerning the law and expresses that resolution in the form of a written decision, it merely is giving expression to some formal concept of the law most likely previously known, but unexpressed as is applicable to a given set of facts and circumstances.

Q: *Historically, what types of disputes are decided by the courts?*

A: Typically, disputes of law center around the application of principles concerning an individual's right or cause of action or reason for being in court.

At earliest, common law individuals could bring suit against each other for two reasons: either due to a breach of contract or due to a civil wrong or tort. The other fashion by which a dispute could come into court is as a result of a criminal wrong. Because these limited areas of resolving disputes obviously did not resolve all disputes that existed in the community, the jurisdiction of courts expanded to include matters which required a dispute-resolving court to do more than enter a judgment of guilt or innocence or a money judgment. Thus arose concepts of equity and equitable dispute resolution. Equitable dispute resolutions are mainly applicable to disputes over land, marriage, or other matters which could not be fairly resolved by money judgment. The judgment of a court exercising dispute-resolving jurisdiction in these types of cases is expressed in some mandatory language, as opposed to money judgments. Thus, these courts enter judgments or decrees which dissolve divorces and divide land.

Q: *Do most cases involve disputes of fact?*

A: Yes. It is fair to say that 90% of all cases that come to a courthouse for resolution do not involve questions of dispute concerning the law. More frequently, the dispute exists over the facts.

Disputes concerning the law require a determination of either 'which law' or 'what law.' Questions of determining 'which law' are questions that involve a determination of whether competing jurisdictions (*i.e.*, federal v. state or state v. state) have a prime concern with the subject matter of the dispute. Disputes of 'what law' are questions of whether, in a public policy sense, existing law should be applied differently to different facts or should be changed by the court.

Often issues involving 'which law' or 'what law' require the dispute-resolving court to choose between two good policies or two good values.

Q: *What do you envision for the Judiciary in the 1990s and the turn of the century?*

A: The Founding Fathers felt that a separate judiciary was the keystone to the protection of our freedoms. Yet, the framers of the Constitution used less than 500 words to establish the Judiciary. The brevity of Article III has often led to misunderstanding of the role and significance of our courts.

The concepts of which I have spoken should hopefully clarify the role of the courts. I am certain it is a concern of all Americans that our courts continue to function in a fair and impartial manner to ensure our liberties.

The precepts of our judiciary and the foundations of our freedoms to which our courts address themselves will remain the same.

The challenges of the future are many, but most significantly is the alarming rise in adjudication. This is due to several factors. There is in fact a rise in criminal activity, particularly drug abuse and its appending anti-social activities, but more importantly is that the more rules (via the legislative or judicial interpretation) that are enacted, the more disputes arise, which inevitably seek resolution from the courts.

Nevertheless, we move toward the future with a single-mindedness that our laws and judiciary represent the greatest protection from chaos and the perpetuation of the American way of life.

An Essay on the Background and Development of the Maryland Judiciary

Professor Abraham A. Dash
University of Maryland
School of Law

I. The Beginning

They padded down the causeways, heavy with plunder, lightly burdened with the weapons of war, those bloody-minded Saxon war bands who engulfed Roman Britain of the Fifth Century. They rejoiced at the pillage and destruction of that higher civilization. Villa after villa, town after town, went up in flames leaving buried ruins and some artifacts to intrigue the tourist of today, and tease the historian. Little is known of Roman England for the Anglo-Saxon scourge was too complete. The remarkable Roman roads and causeways led the war bands quickly and straight as an arrow to the heart of Roman Britain, an irony that the barbarians probably did not appreciate in their zeal to destroy all that was "civilized."[1]

In the words of Gildas,[2] the tearful British historian of these disasters,

> . . . Every colony is levelled to the ground . . . the inhabitants are slaughtered . . . while the sword gleamed on every side and the flames crackled around. How horrible to behold in the midst of the streets . . . the stones of high walls, holy altars, mutilated corpses all covered with buried clots of coagulated blood, as if they had been crushed together in some ghastly wine press . . .

Perhaps too vivid for one writing about 540 A.D., or about one hundred years after the events, but it accurately reflects the complete destruction of Roman culture, institutions, and even their physical presence on the island. The Romans passed away out of the story of Britain, leaving behind only three things as a legacy--the traditional site of London, the Roman Roads and Christianity (at least in Wales),[3] perhaps we can add "Hadrian's Wall," but most of its stones were used to build Saxon and later Danish farms and homes.

II. The "Common Law"

The destruction of Roman civilization, influence, and law made Britain a distinct and separate culture from the remainder of Europe where Roman culture and law prevailed despite the breakdown of the Empire. In Britain the indigenous Celts, mixed with the conquering Saxons, who were followed by the Danes, and finally the last successful invaders, the Normans in the eleventh century, all of which created a culture and system of law unique to Britain. In time, England developed what we call the "Common Law," which has impacted on its history and development, as well as on our own. In the carnage of the Saxon destruction of Roman Britain, though not their intent, the Saxon pirates followed by the Saxon settlements, made possible the replacement of Roman institutions by something much better for all of us, the tradition of the "Common Law," such is the paradox of historic events.

What is the "Common Law," that great inheritance of the English speaking nations? Its composition is subject to some historical debate. Does it go back to the Anglo-Saxon-Danish codes and customs, ripened by the Norman Conquest, or is it a product of the Norman Conquest brought to fulfillment during the reigns of Henry II (1154-89) and Edward III (1327-77), as Trevelyan[4] and Maitland insist? However, it is not its composition that is important, but its concept which is unique to English (and American) jurisprudence. Simply put, the "Common Law" theory is that for most problems that need be resolved there is a solution, custom, or law that while not existing as a documented statute, exists as part of the rules of the historic English jurisprudence. Therefore, one finds that "Common Law" and applies it. In more practical (and modern terms), it is the use of what is called *stare decisis,* "let the decision stand." This is a jurisprudential approach that seeks previous decisions of judicial bodies, who may have had a similar problem before them, and then use their reasoning and legal rationale to resolve the present problem.[5] Naturally, under the "Common Law" system there are statutes which are passed by a legislative body, but they are interpreted and applied, under the "Common Law", by judicial bodies, who may create a new development in the "Common Law". One can readily note, under that concept, a constitutional system whereby laws are interpreted within a Constitutional framework, which to a limited extent is done in England today. The "Common Law" system is contrasted from the Roman, or Civil Law, system which is used in most of the non-English speaking nations of the world. The Civil Law system is based on Codes of Law. Everything is oriented to these legislative codes. When a problem arises one looks to the Code for an answer. When there is a doubt, legal personnel may check relevant scholarly writings to gain some hint as to the interpretation of the statute as applied to certain facts. But generally, the statute is applied as literally as possible. Previous decisions of a judicial body may have some impact, but they are not considered much as authority.

The "Common Law" has many threads of development which we cannot explore here, but it is worth noting the contributions of writers (sometimes noted as Court Reporters) who gathered in the documents and written records of the early "Common Law" courts in volumes of reports on the "Common Law". Notable among those writers are Justice Bracton, who in the thirteenth century wrote "of the laws and customs of England."[6] The great works of Sir Edward Coke such as "Coke on Littleton" (one of his four great commentaries on the "Common Law") did much to preserve and further the development of the "Common Law". It is also worth noting that Coke was the author of the 1628 "Petition of Rights"[7] which served as a model for our Revolutionary forefathers.

However, for our study, it is the rise of the great "Common Law Courts" that is of most interest. Originally the "courts" of England were simply committees of the King's "Magna Curia," or Council, an integral part of the "executive" or the King's power, and providing the "king's justice."[8] These committee members or, as they were later called, Commissioners of Oyer and Terminer (to hear and decide) travelled the countryside bringing the king's justice to the people.

It was during the reign of Henry II (1154-1189) that the "Common Law" courts took their form and organization as judicial bodies, though still appendages of the King's Council. By the issuing of the King's Writ (or letter), these judicial bodies were given more and greater power to hear a variety of cases, and it is from these beginnings that our concepts and ideas of a judicial body stem from. In time, the following courts developed into the "Common Law Courts" of England. The Court of Common Pleas, by a series of Writs of the King, became the non-criminal or Civil Court of England, which heard civil disputes between citizens. The Court of Kings (Queens) Bench or K.B., became the Criminal Court of England. Kings Bench also developed into an appellate court. By a series of Writs, such as certiorari (which is an order to another court to certify and send up its record for review), Kings Bench was empowered to review the decision of the non-criminal courts. The Court of Exchequer was the third of the "Common Law courts", originally empowered to hear cases involving taxes owed to the King, later its jurisdiction encompassed cases involving debts in general, and other financial matters. The Court of Chancery, while not the last of the "Common Law" courts, was the last of the Great "Common Law Courts".[9] Chancery grew as a court of "equity" empowered with what was called "extraordinary" remedies not available to the other "Common Law Courts", such as "injunctions" or "specific performance."

It was with this background that the American Colonies and later the states developed their own judicial system. The "Common Law" permeates our constitutional and judicial system; indeed, the Federal Constitution specifically states in the Seventh Amendment ". . . no fact tried by a jury, shall be otherwise reexamined in any Court of the United States than according to the rules of the "Common Law". . . ." "The "Common Law" referred to is not the common law of any individual state but it is the "Common Law" of England, the grand reservoir of all our jurisprudence," so spoke the Supreme Court of the United States, in *Capital Traction Co. v. Hof.*[10]

III. Pre-Revolutionary Courts of Maryland

Charles I, King of England, granted the Charter of Maryland to Cealius Calvert, second Lord Baltimore, in 1632. Lord Baltimore was given ample power within the charter to ". . . ordain judges, justices, magistrates and officers of what kind, for what cause, and with what power soever . . .," but the Courts, for the province, must recognize that the people of the province were given, ". . . all privileges, franchises and liberties of this our kingdom of England . . ."[11]

So when the settlers set foot at St. Mary's on March 25, 1634 they brought with them, among the artifacts, supplies and tools of settlement, the "Common Law" of England.

One important aspect of the colonial court system in Maryland, as well as the other colonies, was it duplicated as much as possible the judicial system of England.[12] The separation of governmental functions, so basic to American political thought, from the revolution to the present day did not exist at that time. In England the Courts grew from committees of the Royal Council, or the executive, as indeed did the Houses of Parliament, the legislature--all were intertwined. In England, in fact, the highest Court of the land is Parliament, or the House of Lords.[13] In 1676 the Maryland Proprietary noted to the English Privy Council that the Assembly was the highest court in the colony followed by the Provincial Court.[14]

It would be expected that early colonial jurisprudence in Maryland would be crude and untechnical. It seems reasonable to assume that the early colonists would not have "trained lawyers" nor the time for the sophisticated procedures of the "Common Law" of the home country, but apparently that was not the case, as the early judicial records contradict that belief.[15] Our early forebears took very seriously their judicial heritage from England.

In the original Charter of the colony, the Lord Proprietor had full power from the King to provide for the administration of justice.[16] He, in turn, by writ, empowered his appointed Governor to act as Chief Justice, and the members of the council were made Associate Justices. So, from 1637 until 1642, a judicial structure developed whereby the legislative council operated as a law court called at first the County Court with the governor as chief judge.[17] By 1642, this court became the "Provincial" Court.[18] It was the chief court of the colony regarded as the local equivalent of the great Common Law Court of Kings Bench. As additional counties were established with their separate county courts, the Provincial Court (as England's Kings Bench) added appellate jurisdiction to its trial jurisdiction. Up to 1692, only members of the legislature or Council could be judges on the court, after that year, judges could be appointed even if not members of the Council, and the court developed into a separate institution with "full time" judges.

During the Seventeenth Century there was judicial confusion, for as part of Lord Baltimore's plan to establish "Manors" such as the County Squires of England, there was a development of small "Manor" courts presided over by the Manor "Lord."[19] They resembled the "Justice of Peace" system of English rural law (and of early Maryland rural law). How long these Manor Courts existed is unknown, but from the fragmentary remnants of their proceedings (1659-1679) there are glimpses of early colonial legal disputes. The Indian King of Chaptico went before the court ". . . for killing a sow and the taking of piggs. . . ." This case was too difficult for the Manor Court and was referred to the Provincial Court of the Governor. More the Manor Court style was "and he . . . breaking into the Lord of Manor's Orchard . . ." or for ". . . suffering his horses to destroy a corn field . . . ."[20]

While again little is known of these Manor Courts, they must have paved the way for the development of local courts or the Justices of Peace as Maryland expanded. The local justices of peace, serving as a local court or judges were of great importance in the later colonial period to the end of the eighteenth century. This office had its beginnings in the English Common Law as far back as the twelfth century.[21] Chief Justice Bond notes its importance historically, quoting from Trevelyan's History of England, it being one of the most important features of the English Governmental System.

In another early development that affected the subsequent structure of the Maryland Judicial System, a method of appeals was evolving. Where the Provincial Court had assumed appellate powers over the growing local courts, appeals from the Provincial Court were being heard in the Upper House of the Assembly. The legislative assembly, which had originated as the Governor's Council, had developed by 1649 into an upper house, composed of the Governor and his counsel, and a lower house of representatives or House of Burgesses. Following the English Parliamentary system, where final appeals from the Courts were heard in the House of Lords, the Maryland Upper House in 1664, by use of a "Writ of Error" issued by the Governor, accepted appeals from the judgment of the Provincial Court.[22] It is an interesting anomaly that since the Provincial Court was composed of the Governor and his Council, as was the upper house, the appeals were in fact taken to the same persons who had decided the case, in the court below. Perhaps that is why, by 1681, the Upper House discontinued its appellate role, requesting that a law be passed establishing an appellate body. This was done in 1694, when a court (still composed of councilors) of Appeals was established to sit at St. Mary's.[23] It moved to Annapolis in 1695. The judicial system from that year until the revolution, remained the same with few changes. The justice of peace and county courts grew in numbers and influence but the system remained with the Provincial Court over the local courts, and the Court of Appeals the high court of the colony.[24] There were continuing complaints, throughout the Eighteenth century, by the growing numbers of lawyers who voiced concern that often a council member, who served on the Provincial Court, also was a judge on the Court of Appeals, and that the Governor remained on both courts. This anomaly remained until 1776, and the Revolution.

IV. The Revolution

The Revolution of 1776 made little change in the institutions in Maryland.[25] There was, afterwards, still a Governor and Council, a General Assembly of two houses, and a Court of Appeals. The name Provincial Court was changed, as Maryland was no longer a Province, to the "General Court." However, the concepts behind our government and jurisprudence changed dramatically, as it did with the other former colonies. Americans added three simple, but brilliant and startling additions, to the English Common Law and jurisprudence. The separation of functions of the Government, a written Constitution as the supreme law of the land, and a judiciary as the only interpreter of that Constitution (known as "Judicial Review").

(1) Separation of Governmental Function

In England, as we know, all functions of government rested in the King, and to this day (in theory) still does. The executive, or Prime Minister, as all his Cabinet, are members of the legislature or House of Commons. The House of Lords, through its "Law Lords" is the "Supreme Court" of England. Indeed, separation of government functions is an alien concept to England. Trevelyan, in his History of England believes that American political thinkers misunderstood the reforms resulting from the Civil War (1642-46), the Protectorship of Cromwell, and the restoration of the Monarchy (1660), and erroneously thought English common law development had embraced separation of powers.[26] Actually, American political thought was highly developed in the recognition that separation of government powers, and functions is a necessity to protect against tyranny. The Federalist papers discuss in great depth the danger of combining governmental functions as in ". . . The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed or elective, may justly be pronounced the very definition of Tyranny."[27]

Separation of powers has been one of the keystones of our developing jurisprudence and of our "Common Law."

(2) A Written Constitution

In England, no law is more important than any other. All acts of Parliament are equal. There is no written Constitution within which all laws are tested. However, England, over the centuries, has developed what is called the "unwritten Constitution." This "unwritten Constitution" is based on common law concepts that developed during those centuries, and certain principles enunciated in three documents that are particularly important to English jurisprudence. The Magna Charta (Great Charter) of 1215 is one, where the Nobles of England demanded, and received, certain rights from the King. The second document is the Petition of Rights, which was an act of Parliament in 1628, drafted by Sir Edward Coke.[28] This act reenforced the viability of the Common Law and the power of Parliament to protect all subjects of the land against arbitrary power. The third document (and one rather important to Americans) was the English Bill of Rights of 1689. This particular document was a result of what England calls its "Glorious Revolution," when England deposed the Stuarts (James II) and invited William and Mary to take the throne of England. However, prior to permitting William and Mary to assume the throne, Parliament forced them to agree to a written contract in which certain rights of the people were preserved. This concept of written rights was basic to American constitutional thought, and indeed our "Bill of Rights" mirrors many of the rights listed in that "Contract" of 1689. But under English jurisprudence, while the Monarch cannot, Parliament can theoretically negate or repeal all or any of the rights in their "Unwritten Constitution" as Parliament is the supreme law maker. The brilliant, if simple, concept behind the written Constitution of the United States is that neither Congress nor the President (nor the Several States) can take away any rights in that document, nor can they make laws or take actions that violate the Constitution. Similarly, the Governor and the General Assembly of Maryland cannot violate the State Constitution and its "Declaration of Rights."

(3) Judicial Review

England and the United States share in the common law tradition of *stare decisis,* as noted above. The Courts of both countries look for prior decisions of other courts to find an answer to a legal issue. They must follow the precedent or prior decisions of higher courts in their jurisdiction. However, in England, when a Court reviews an Act of Parliament it does not have the power or authority to overturn the act because it violates the Common Law or the English Constitution. Instead, the English Courts attempt to interpret the statute so as to make it conform with the "Common Law", or the right in question, regardless of how tortured the interpretation may be. The judicial theory behind this is that Parliament would not intend to violate the "Common Law" or the English Constitution. However, the English Courts cannot overturn the act, so Parliament can reenact the statute to in fact repeal or change the "Common Law" or Constitution.

Basic to the jurisprudence of the United States and the separate states is the power of the Court to interpret the Constitution, and to overturn legislative enactments or acts of the executive if the Court finds them in violation of the Constitution. Today such a concept seems obvious, but in Eighteenth Century Anglo-American jurisprudence it was mind-boggling.

When this idea was raised during the Constitutional debates (1787-89), it was objected to as making the judiciary superior to the legislature. It was further argued that the ". . . Legislative body are themselves the constitutional judges of their own powers. . . "[29] Alexander Hamilton argued that ". . . A Constitution is, in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to the Courts to ascertain its meaning, as well as the meaning of any particular act. . ." and he stated if there is a "variance" the Courts should void the act.[30] Interestingly, the Constitution of the United States (or the Constitution of Maryland) did not address judicial review, indeed, such judicial power is not in the Constitution.

It was Chief Justice Marshall of the U.S. Supreme Court who made judicial review a cornerstone of American jurisprudence. In *Marbury v. Madison,*[31] he said the Constitution is the fundamental law of the land; in cases of conflict between it and a statute, ". . . An act of the legislature repugnant to the Constitution is void. . ." moreover, ". . . it is emphatically the province and duty of the judicial department to say what the law is. . ."

After the Revolution the jurisprudence of the United States, with the addition of separation of government functions, a written constitution as the supreme law of the land; and judicial review, began its separate and unique development of its "Common Law."[32]

With this "fleeting glimpse" at the background and development of our jurisprudential system we can approach the present judicial structure in Maryland.

V. Growth of Maryland's Present Judicial Structure

The Maryland State Constitution of 1776 established a judicial system patterned on the prior Colonial judicial system which proved unwieldy and awkward. There was instituted a Maryland Court of Appeals, as the high court of the state, whose composition was left ". . . composed of persons of integrity and sound judgment in the law, whose judgment shall be final and conclusive, in all cases of appeal, . . ."[33]

The Provincial Court, now called the "General" court, was retained, and following common law tradition, there was the equitable Court of Chancery, and the Court of Admiralty.[34] At the lower and local level there were justices of peace and county courts. The General Court retained not only its state-wide "trial" court jurisdiction, but also its intermediate appeal jurisdiction very much in the tradition of the English "Common Law" Court of Kings Bench. Interestingly enough, the General Court had, during its existence, a higher reputation than the Maryland Court of Appeals which was, in fact, the state supreme court. Four members of the General Court, Robert H. Harrison, Thomas Johnson, Samuel Chase, and Gabriel Duvall were actually appointed from that Court to the United States Supreme Court, no members of the Court of Appeals has been so honored.[35] However, the General Court which sat in Annapolis (and on occasion on the Eastern Shore pursuant to Article 56 of the 1776 Constitution) was inconvenient as a trial court for the expanding counties of Maryland, and was abolished by constitutional amendment in 1805 by Act 1804, Chapter 55, of the General Assembly.[36] By this amendment the General Assembly vested all trial jurisdiction in the County Courts and grouped them into six judicial districts each to be presided over by a Chief Judge and two associate judges. The six chief judges of the districts also constituted the membership of the Court of Appeals. An arrangement reminiscent of the judicial organization of the federal government and of England.

This judicial system lasted forty-five years until 1851 where several significant changes were made to the Courts that are relevant to this day. Trial courts were divided into four Districts and eight Circuits, the first usage of the term Circuit Court in Maryland. Justices of the Maryland Court of Appeals would no longer be composed of judges from the trial court, but would be separately chosen from the new judicial districts.[37] Most significant was the change to elected judges. Up to now all judges had been appointed by the Governor, but in the 1851 amendments to the Constitution, judges were to stand for election in the judicial district they would come from. The debate on elective versus appointed judges was a long and bitter one. It is being debated to the present time and recently in 1971, when our "District" court system was enacted the judges are "appointed."

The last-but-not-least change in 1851 was to have the Maryland Court of Appeals stay in Annapolis (it had previously been moving around the state as a convenience to the District trial judges who had constituted the Court), where it is today.

In 1864, there was a Constitutional Convention and a new State Constitution that, borne of the passions of the Civil War, disenfranchised much of the state population, and changed to some extent the judicial system.[38] In 1867, there was another Constitutional Convention to undo the work of the 1864 Convention, and in the Constitution of 1867, reversed much of the 1864 Constitution, leaving the Maryland judicial system pretty much the same as it had been. Interestingly enough, the most bitter debates in both Conventions dealt with appointed vs. elected judges. Elected judges were retained.

For most of the two hundred years of Maryland's statehood, after the General Court was abolished in 1805, the Court of Appeals was the only appellate court, or the only place where appeals from the trial court could be taken. The national increase in population, and complexity of the growing economy, after World War II, increased the work of the Court of Appeals perhaps ten-fold. The revolution in criminal procedure, particularly by the United States Supreme Court during Chief Justice Warren's years (1959-1969), added an even greater caseload on all state appellate courts, of which the Maryland Court of Appeals was no exception. This great caseload increase led to the 1966 amendment to the Maryland Constitution establishing an intermediate appellate court, the Court of Special Appeals.[39]

The last significant change made in the Maryland judicial system was the establishment of a system of District Courts of limited jurisdiction which supplanted a hodgepodge of traditional local courts such as Magistrate Courts, Justices of Peace, People's Courts, and the Municipal Court of Baltimore City.[40]

However, Maryland has retained one of its older local courts called the "Orphan's Court," which, with the exception of Montgomery and Harford county, exist in all other counties and Baltimore City. This Court deals mainly with probate matters, and is perhaps a historical curiosity in the modern state system.[41]

VI. The Maryland Courts Today

Maryland has a four-tiered court system: two trial courts, the District and Circuit Courts, and two appellate courts, the Court of Special Appeals and the Maryland Court of Appeals.

(1) District Courts

The District Courts are the lowest courts in the system. Its jurisdiction covers criminal and civil cases. Criminal jurisdiction includes "Common Law" and statutory misdemeanor crimes (minor crimes). Since the District Court cannot have jury trials, only trials by judge alone, it does not handle criminal cases where punishment could be more than ninety days' imprisonment.

The Sixth Amendment to the United States Constitution applies to state criminal trials and requires trial by jury, unless waived, for serious offenses.[42] There are some crimes, more serious than misdemeanors, that the District Court can accept jurisdiction, where the defendant waives his right to jury trial.

The District Court has original jurisdiction for most violations of the Motor Vehicle Code, with the same caveat as above, that if the violation constitutes a felony (more than 96 days' imprisonment), they lose jurisdiction.[43] In civil actions the District Court has exclusive original jurisdiction when the amount involved is less than $2,500, which makes it similar to the "Small Claims Courts" of other States, but shares or has concurrent jurisdiction with the Circuit Courts where the amount involved is between $2,500 and $10,000. This Court also deals with most landlord-tenant disputes.

There are twelve District Courts in the State, with about ninety judges.[44] All District Court judges are appointed by the Governor, and do not stand for election, which is an exception to how other judges are retained in the other courts. As an indication of the volume or caseload of this court (and perhaps a sign of the times) each District Court judge in Baltimore averaged 2,569 criminal cases per year; in Prince George's County 2,449 cases; in Baltimore County 1,691 cases; and in Montgomery County 1,438. In the fiscal year of 1990, over 59,000 criminal cases were processed in the Baltimore City District Court alone![45]

(2) Circuit Courts

The Circuit Courts are the highest trial courts with original jurisdiction in all common law and statutory criminal and civil matters, with the limited exception of those lesser matters where jurisdiction rests with the District Courts. They are in fact the courts that replaced the old "General" Court of the nineteenth century. These courts combine the powers of most of the old "Common Law" courts, including the power to issue equitable relief once reserved for the equity Courts of Chancery.[46] An interesting aspect of the Courts jurisdiction is its *de novo* appellate authority over the District Courts, which reflects the old "Common Law" *de novo* appeal to the Court of Chancery. *De novo* means a new trial, where the case starts all over again for a complete second trial. Under the common law, when someone lost his case in the Canon (Church) courts, or in the Court of Common Pleas, they sometimes could get a *de novo* second trial in the Court of Chancery.[47]

When a defendant loses in the District Court, he may under certain circumstances appeal and receive a second trial *(de novo)* in the Circuit Court. This also applies to certain probate matters in the Orphan's Court, where the Circuit Court can grant an appeal and a *de novo* trial.[48]

The Circuit Courts also have jurisdiction over juvenile cases; with the exception of Montgomery County, where jurisdiction rests with the District Court with appellate review in the Circuit Courts.

There are eight circuit courts, for the twenty three counties plus one for Baltimore City, and about 110 judges state-wide.[49] Circuit Court judges are appointed by the Governor, but must stand for election in the next general election. Once elected, the term is for fifteen years.

(3) Court of Special Appeals

The role of appellate courts is vital to any jurisdiction's jurisprudence that extends beyond seeing that justice is done in each individual case. The institutional roles of appellate courts was described by Judge Shirley Hufstedler as follows:[50]

> Appellate courts serve two quite different functions: First, appellate courts review the trial record for error in the particular case. We can call this the review for correctness. Second, appellate courts use the cases before them as vehicles for stating and applying constitutional principle, for authoritatively interpreting statutes, for formulating and expressing policy on legal issues of system-wide concern, for developing the common law, and for supervising each level of the system below them. We can call the second set of tasks the institutional function--the business of Government.

The Court of Special Appeals is the state's intermediate appellate court. Appeals from the Circuit Court (and Orphans Courts), criminal and civil, are first heard by the Court of Special Appeals. There are appeals, as a matter of right, meaning that this Court must hear the appeal when made.[51]

This Court, located in Annapolis, has thirteen judges. Its normal procedure is to hear an appeal in panels of three judges. In unusual cases or circumstances, the entire Court will hear the appeal. When the entire Court sits for a case it is referred to as an "en banc" hearing.

The appellate process is, of course, different from the trial court. Except in very rare circumstances, an appellate court will not hear new evidence. Attorneys, in the form of a written "Brief," will argue their points of law which will be read by the judges assigned to the panel for that case. Subsequently, a time for oral argument will be assigned, where the attorneys will orally argue their case before the panel of judges. The panel will render their written opinion at a later time.

The selection of judges for the Court of Special Appeals is rather complex. Judges are initially appointed by the Government, with Senate approval.[52] Then, they stand for election every ten years. They run unopposed, to be "judged" on their records. The state is divided into six appellate judicial circuits. One judge is elected from each circuit, except two are elected from Baltimore City. The remaining six judges are elected state-wide.

(4) Court of Appeals

The Maryland Court of Appeals is the state's supreme court. Its roots go back to ". . . the earliest days of the colony when the Governor and his Council issued writs of error to review judgments of the Central Provincial Court. . . ";[53] and its name "Court of Appeals" dates back to the Maryland Constitution of 1776.[54]

Appeals to the Court are "discretionary, meaning that the Court decides what cases it will hear on appeal;[55] and thus can control its docket. It has general jurisdiction over the Court of Special Appeals; and controls the development of the "Common Law" or the decisional law of the state. The Court also will receive cases in the form of ". . . 'Questions of Law' certified to it by either a federal court or an appellate court of another state under the Uniform Certification of Questions of Law Act. . ."[56]

Another important function of the Maryland Court of Appeals is its control over the professional bar of Maryland, a function not well-known to the general public. In order for attorneys to practice in the State of Maryland, they must be admitted to the Bar of the Court of Appeals. They are subject to the Rules of Professional Conduct promulgated by the Court of Appeals.[57] The Court has the authority to discipline the members of the Bar, and, when necessary, disbar an attorney from the practice of law.

The Court of Appeals is also empowered to establish rules and regulations to govern the practice and procedure of all the Courts in the state.

As the court of last resort, there are no appeals from this Court, except where issues involving the federal Constitution are raised. In those cases, appeals can be taken to the federal courts to be resolved by the U.S. Supreme Court.[58] The main method of obtaining review by the Court of Appeals is by "Writ of Certiorari," one of the old common law writs still in use to this day.[59] On the average, the Court accepts for review about 25% of the petitions of certiorari filed each year.

The procedure of the Maryland Court of Appeals is similar to the Maryland Court of Special Appeals. Once the writ of certiorari is granted, the attorneys will submit written briefs arguing their issues of law. A time for oral argument is set where the attorney will orally present their case to the Court. However, the entire Court of Appeals will hear each case, as the United States Supreme Court does. The resulting opinion of the Court on each case is written and published, often with dissenting opinions when the Court cannot reach a unanimous opinion.[60] These published opinions are fundamental to Maryland jurisprudence. Part of our common law heritage is the principle of "stare decisis." Therefore, the precedents established in the long line of Maryland Court of

Appeals cases--or case law--are controlling unless the Court reverses a previous case, and makes "new law," which it does on occasion. The Court's interpretation of laws passed by the General Assembly can be "reversed" by the Legislature, if it disagrees with the Court's interpretation and passes an amendment. But the Court's interpretation of the federal and state constitution cannot be. Its interpretation of the "Common Law", when applicable, can only be changed by the Legislature replacing that "Common Law" principle with a statute (which could raise constitutional issues that only the Court can resolve).[61]

The Maryland Court of Appeals is composed of seven judges. The Governor, with State Senate approval, initially appoints the judges. They must, however, stand for an unopposed election every ten years. There is a judge for each of the six appellate judicial Circuits (two from Baltimore City), and the Governor picks one of the seven to be Chief Justice.[62]

Conclusion

In the Maryland Constitution's Declaration of Rights, Article 5 states:

> ". . . That the inhabitants of Maryland are entitled to the Common Law of England, and the trial by jury according to the course of that law, and to the benefit of such of the English statutes as existed on the fourth day of July, seventeen-hundred and seventy-six; and which by experience have been found applicable to their local and other circumstances; and have been introduced, used and practiced by he Courts of Law on equity, ..."

That clear recognition of the heritage of the English "Common Law", passed on to us as a matter of right, explains why this essay starts with the ". . . padding down the causeways . . ." of the Saxon war bands, almost sixteen hundred years ago. There were a large number of Colonial lawyers who were either trained at the great English "Inns of Court" or were trained by such practitioners, in pre-revolution Maryland.[63] The impact on our institutions by their background is with us today. Naturally, the unique circumstances of Colonial life fashioned an American legal tradition which departed from the system of the English Courts, ultimately becoming an American; and a Maryland common law different in many basic concepts from English jurisprudence. However, whenever today we have an officer of our courts open the court day with the cry of "Oyer, Oyer" which many do, this is a resonance going back six hundred years to the "Common Law" Commissioners of Oyer and Terminer, who brought the King's justice to the local English countryside. It is a fascinating and proud heritage.

NOTES

1. G. M. Trevelyan, *History of England*, Vol. 1 (Book One), Chapter 3 (1952) [hereinafter cited as Trevelyan]; Myres, "The English Settlements," Vol. 1, Oxford History of England (1938).

2. Trevelyan, Vol. 1 (Book One), p. 60.

3. Trevelyan, Vol. 1 (Book One), Chapter 3.

4. *Id*. Pollack and Maitland, *History of English Law* (Introduction to Volume 1), 1899. Frederick G. Kempin, *Historical Introduction to Anglo-American Law*, pp. 6-8, 1973 [hereinafter cited as Kempin].

5. Kempin, pp. 82-84.

6. Catherine Drinker Bowen, *The Lion and the Throne*, Chapter 34 (1956). Kempin, pp. 80-81.

7. *Id*., pp. 487-503.

8. Trevelyan, Vol. 1, pp. 212-215, Kempin, pp. 27-29.

9. *Id*.

10. 174 U.S. 1, 8.

11. Bernard C. Steiner, *Maryland's First Courts-American Historical Association Report* (1900) [hereinafter cited as Steiner].

12. C. Bond, *The Court of Appeals of Maryland, A History* (1928), Chapter 1 [hereinafter cited as Bond, History].

13. Coke on Littleton, 109b, 4.

14. Archives of Maryland, *Proceedings of Council-1667* (128 and 264).

15. C. Bond, *Proceedings of the Maryland Court of Appeals, 1695-1729: Introduction* (1933) [hereinafter cited as Bond, Proceedings].

16. Bond, History, p. 3.

17. Steiner, pp. 213-214.

18. Bond, History, p. 5.

19. Steiner, p. 221.

20. Published in 1 J. 11 U. Studies in Historical and Political Science-Old Maryland Manors (John Johnson).

21. Bond, History, p. 9

22. Bond, History, pp. 6-7.

23. Bond, History, p. 8. See also, Reynolds, "The Courts of Appeals of Maryland", 37 *Md. L. Rev. 1* (1977) [hereinafter cited as Reynolds].

24. Through most of the colonial period there were also a Court of Chancery [similar to the English Common Law Court] and a later court of admiralty.

25. Bond, History (Chapter III).

26. Trevelyan, Vol. II, Book Four, Chapter I.

27. *The Federalist* No. 47 (Madison as Publius, Feb. 1, 1788).

28. Trevelyan, Col. II, Book Four, Chapter I. See also note 6, *supra*.

29. *The Federalist*, No. 78 (1788).

30. *Id*.

31. 1 Cranch 137, 2 L. Ed. 60 (1803).

32. It is of interest that in the committee of the "Declaration of Rights" at the Constitutional Convention for Maryland "Separation of Government Functions" won by one vote (30 to 29), and was *not* adopted by most state constitutions at that time. See Bond, History, p. 59.

33. Md. Const. of 1776, Art. 56.

34. The State Court of Admiralty was abolished when the federal courts assumed admiralty jurisdiction pursuant to Art. III, Sec. 2, U.S. Constitution.

35. Reynolds, 37 *Md. L. Rev.* 1, 3 (1977).

36. Under the Constitution of 1776, Article 59, amendments were made by the General Assembly, not the electorate.

37. Bond, History, pp. 149-151.

38. Bond, History, pp. 167-177.

39. Md. Const. Art. IV. Section 14A (1966). See also Reynolds, 37 *Md. L. Rev*. 3 at note 10.

40. Md. Const. Art. IV, Sections 1 and 41A. See also *Thompson v. Giordano,* 16 Md. App. 264 (1972).

41. Md. Const. Art. IV, Section 40 (1978).

42. *Duncan v. Louisiana,* 391 U.S. 145 (1967); *Baldwin v. New York,* 399 U.S. 66 (1969).

43. Md. Cts. & Jud. Proc. Code Ann. Subsect. 4-101 to 4-105.

44. Md. Cts. & Jud. Proc. Code Ann. Subsect. 1-602.

45. Report of the Committee on Drug Crisis and Underfunding of the Justice System, Bar Association of Baltimore, 1990, pp. 8-9.

46. Md. Cts. & Jud. Proc. Code Ann. Sect. 1-501.

47. Trevelyan, Vol. I, Book Two, Chapter 2.

48. Md. Cts. & Jud. Proc. Code Ann. Sect. 12-401.

49. "Report of The Committee on the Drug Crisis and Underfunding of the Justice System", Bar Association of Baltimore, 1990, pp. 8-9.

50. Reynolds, 37 Md. L. Rev. 1, 8, quoting from 44 S. Cal. L. Rev. 901, 910 (1971).

51. Md. Cts. & Jud. Proc. Code Ann. Sect. 14-401 and *Estep v. Estep,* 285 Md. 416 (1979).

52. Md. Cts. & Jud. Proc. Code Ann. Sect. 1-402.

53. Reynolds, 37 Md. L. Rev. 1, 3.

54. Bond, History, pp. 59-60.

55. Reynolds, 37 Md. L. Rev. 1, 4.

56. Reynolds, 37 Md. L. Rev., 1, 4.

57. Md. R.P. 1230, Md. R.P., BVI et seq. See also, 41 Md. L. Rev. 399 (1982).

58. During the years when Chief Justice Warren was on the United States Supreme Court (1959-69), the Court "incorporated" the Fourth, Fifth, and Sixth Amendments (among others) of the Federal Constitution into the "due process clause" of the Fourteenth Amendment, and applied them to the States in the same manner as they applied to the Federal Government. This created a revolution in criminal procedure in the States. Even though the Maryland Constitution's "Declaration of Rights" has similar provisions to the Federal Bill of Rights, the Maryland Court of Appeals, as all state supreme courts, was obligated to follow the U.S. Supreme Court's interpretation of

those federal rights. See *Mapp v. Ohio,* 367 U.S. 643 (1961), and *Duncan v. Louisiana,* 391 U.S. 145 (1967).

59. Reynolds, 37 Md. L. Rev. 1, 4.

60. The Maryland Court of Appeals' opinions are bound and published, and are available in most law libraries. The Official Reports are known as the "Maryland Reports" and are cited as Vol. Md. page no. for each case. The Maryland Court of Special Appeals does not publish all of its opinions, but their reports are also in bound volumes that include the most important cases of that court and also are available at law libraries.

61. See Reynolds generally.

62. Md. Const. Art. IV, Section 14 (1978).

63. Evarts B. Green, Foreword to the Proceedings of the Maryland Court of Appeals 1695-1729 (1933).

33

Courtroom Activities for the Classroom

One of the more vexing problems that social studies educators face in teaching our youth is that the structures and workings of our governmental systems are not mere abstraction, but in fact have actual daily applications. This is particularly true of our Judiciary, whose rules of procedure, formality, and deliberate pace seem a labyrinth not to be understood by the average citizen. Conversely, patriot and lawyer James Wilson, one of the original justices of the Supreme court, stated in 1790, "The science of the law should in some measure and in some degree be the study of every free citizen."

The use of "hands on," proactive, participatory student activities has proven to be an effective method in providing students with a realistic view of the workings of our Judiciary and other governmental systems.

One of the best of these is the case study-adversary approach and the utilization of the mock trial model. Educators trained in law-related workshops generally feel comfortable with these approaches, but those who have yet to be exposed to these workshops are sometimes hesitant to attempt these methods. The purpose of this guide is to aid the individual teacher with step-by-step procedures which will include examples of cases and other resources designed for immediate utilization.

Why Use These Techniques?

Most social studies educators would include as part of their learning objectives the following:

1. developing critical thinking skills
2. an appreciation of the use of factual information in decision making
3. the ability to analyze data
4. development of communication skills
5. active listening skills

Seldom do such typical assignments as textbook reading, lectures, and individual writing activities in isolation provide for the development of these objectives. However, the three methods presented in this guide are designed to foster attainment of each of these objectives and their prerequisite skills while at the same time teaching legal concepts.

The Case Study Approach

Rationale

The case study approach to the teaching of legal concepts and issues encourages teacher and student to engage in the following activities: 1. a statement or review of all the facts of a particular case; 2. an investigation or treatment of the issues and arguments; 3. development and analysis of the argument; and 4. an analysis or consideration of the decision, including the legal reasoning and implications of the ruling.

The case study method, by its very nature, emphasizes the importance of factual information, the decision-making process, and critical thinking skills. Before proceeding with any study of a legal case, it is essential for the students to interpret and clearly understand the facts of the case. The identification of facts in the case provide the basis for an exploration of the issues and consideration of the decision. Consequently, a mastery of the facts is one of the three important phases in the case study approach. Knowledge of the facts is a prerequisite to the implementation of the other phases of the approach. The teacher and students alike must know the facts before they can identify significant issues, prepare persuasive arguments, and formulate well-reasoned conclusions regarding the specific case and the law. The analysis of facts leads to a focus on the issue or questions around which the case revolves. During this phase of exploration, the issues involved in a case become arguments in favor of, or in opposition to, a particular position and are developed accordingly. Students are exposed to a variety of viewpoints and ideas. They are asked to listen to, consider, and evaluate all viewpoints including those with which they may disagree. In addition, they are asked to present their ideas logically based on sound reasoning.

In the final phase of the case study approach, the students are asked to give careful consideration to the decision. Students, for example, may be instructed to formulate their own decisions for a case. This generally includes developing reasons and justifications for their decision in terms of their analysis of the facts and arguments in the case. Students may also be asked to consider the consequence of their decision. Students may be instructed to evaluate the actual court decision and reasoning and/or compare it to their own. In each of these options, however, the emphasis is identical. Understanding and reason, rather than emotions, are to serve as the basis for student decision-making and evaluation.

Procedure

Present a case from the newspaper, magazines, etc., or present a historical case *(i.e., Dred Scott, Madison v. Marbury, Plessy v. Ferguson).* You can also create fictitious cases of interest to youth such as drug-related cases, search and seizure in schools, etc.

Have students read the case. Then sequentially complete the following:

1. Review the facts -- This can be accomplished individually, in groups, or with the whole class by first compiling a list of the facts. Out of this list students are then asked to select the pertinent or significant facts of the case.

2. Determination of the main issue -- Analysis of the case will reveal whether the main issue is clearly presented. If it is presented, students can identify it and move on to the next step. If the main issue is not presented, a review of the facts creates the opportunity for students to develop what they consider to be the main issue. Initially you may wish to check in with students to assure that they have correctly identified the main issue. Once the students have mastered this skill you may wish to eliminate the check-in.

3. Development or analysis of the argument -- Depending upon the case presented, this step involves either the analysis or the development of an argument in favor of or in opposition to a particular position. This step provides the opportunity for students to be confronted with a variety of ideas and viewpoints. Students are asked to listen in order to weigh and analyze all viewpoints, including those with which they disagree.

4. Analysis -- Consideration or development of a decision based upon the facts and issues. When a case is still pending or when the decision is not revealed in the presentation, or in using hypothetical cases such as those presented in this guide, students can be instructed to complete the first four steps and then evaluate and compare their decisions with others in the class. If an actual court case is used, the decision can be shared and students can compare their decision with that of the court. The critical components of either approach are the application of reasoning skills and understanding of the issues and concepts presented.

5. Evaluation of the legal reasoning and implication of the ruling -- Students compare their decisions to those rendered by the court or, if they are using a hypothetical case, consider the implication of the case presented with other situations students will face. Example: a verbal contract is hard to prove so if students are faced with an important transaction, they may wish to write out the agreement.

Role of the Teacher

The very nature of the Case Study Method requires that the teacher play a supportive role as facilitator of the instructional process. The teacher serves as a discussion leader and evaluator. He or she must be certain that the students have a good understanding of the facts in a particular case, that they have a firm grasp of the issues involved, and begin to use a rational thought process in arriving at their conclusions.

Also, it is important that the teacher maintains a positive non-threatening environment where students are encouraged to honestly express themselves and freely consider alternatives while studying a case.

Cautionary Notes

In his book, Teaching About the Law, Ron Gerlach, a major proponent of the Case Study Method, makes some major points dealing with the limitations of the Case Study approach. Teachers should keep these in mind when using this method.

First, the method assumes that students possess certain background information and that they be able to comprehend the facts of the case under consideration. Cases selected must be appropriate to the comprehension level of a particular class. If not, a lesson based upon a case study will likely be nonproductive and frustrating to both teacher and students.

Secondly, the Case Study Method requires that students make independent judgements regarding a particular legal case or issue. It is important that they realize and accept the fact that their views will be open to challenge and analysis. Some students may be inhibited by these conditions. If such a situation arises and temporarily impedes the educational process, a teacher's patience and guidance will be necessary to overcome the problem.

The following form is a convenient handout for students to aid in the analysis of cases.

BRIEF FORMAT

TITLE:	
CITE:	
FACTS:	
ISSUE:	
DECISION:	
REASON:	

The Adversary Approach

Rationale

Once students have been exposed to and feel comfortable with the Case Study Method, the next level of involvement that may be introduced is the Adversary Approach. This method, based on *pro se* or small claims court, teaches simplified trial process and technique. By using the Adversary Approach, the students can be introduced into trial procedures without much of the complexity or the extended time of completing a mock trial.

Since there is a natural sequential development between the Case Study Method and the Adversary Approach technique, it is not recommended that the Adversary Approach be introduced prior to student exposure to the Case Study Method.

Generally, the Adversary Approach can be done very easily within one classroom period. Each student is critically involved as a major character and there are no minor roles. Since the students are working in triads, shy or reluctant people are not forced to role play or act in front of others. The activity can be done with any size class.

Procedure

The following steps should be employed:

1. Arbitrarily divide the class into groups of three. If anyone is left over, have him or her act as an observer and later alternate as a participant.

2. Have the participants in each group decide upon a role, such as judge, plaintiff, or defendant. They will rotate roles for three rounds.

3. Using the role descriptions below, read the brief statements about each role.

4. Select a case and distribute FACTS of the case to all of the groups. Do not disclose the ISSUE or the DECISION at this time. To extend this activity, simply utilize more cases.

5. Have the participants role play within their individual groups. The plaintiff speaks first, then the defendant. The judge may ask questions before making a decision and giving reasons.

6. Have judges explain decisions to the whole class.

7. It is likely that there will be more than one decision per case. Point out that, as in a real courtroom, there are many variables that enter into a decision, *e.g.*, the judge, the testimony, how well the case is presented, and so on.

8. Read ISSUE and DECISION to class if appropriate.

9. Rotate the roles and repeat the process twice with a new case each time.

10. The following questions are suggested for debriefing the activity.
    - Which is the most difficult role to play? Why?
    - How well (realistically) did the participants play their roles?
    - What are the issues in this case?
    - Were the judges' decisions "fair"?

Role Descriptions

Judge -- The judge must see that both sides have a fair chance to present their cases. The judge should not interrupt or dominate the proceedings.

Plaintiff -- This person has accused the defendant of doing or not doing something which he/she thinks is unfair. This person has asked the court to hear the case. In a Small Claims Court, the plaintiff is asking the judge to make the defendant pay an amount of money (under $5000). The plaintiff speaks to the judge first.

Defendant --This person has been accused by the plaintiff. He/She has been summoned into court and is probably appearing involuntarily. The defendant listens to the accusation and then either tries to prove it untrue or gives reasons to justify his/her actions.

Negotiation Option

Once students have had the opportunity to enact several cases, you may wish to offer them the "negotiation option." This option provides for the plaintiff and defendant to meet prior to court and attempt to reach a mutual settlement. This "out-of-court" settlement could lead to a discussion of litigation, its costs and benefits, and whether students were able to reach an agreement.

The Mock Trial

Rationale

Mock Trials are one of the most popular and academically stimulating exercises used in the law-related education program. This activity is a simulation of a courtroom drama in either a civil or criminal case.

The mock trial simulation is designed to:

- focus student interest on the concept of "justice" and due process of law.
- increase proficiency in basic life skills such as listening, speaking, reading, and critical thinking.
- further student awareness of the purposes and goals of our legal system.
- facilitate the study of courtroom procedures and trial practices.
- enhance communication and cooperation between the school, community, and the legal profession.
- heighten enthusiasm for academic studies.

The mock trial involves three stages: PREPARATION, ENACTMENT, and DEBRIEFING. The trial can be carried out in four to six class periods. This is a time-consuming law education activity, but can be used once each semester in any given course.

Procedure

Preparation

During the preparation stage of a mock trial activity, the following six tasks need to be completed:

1. Several days prior to enactment, a transcript of the facts of the case to be tried should be distributed to the class. Student comprehension of the handout should be checked by the instructor.

2. The roles for the enactment should be assigned (randomly or on the basis of ability and interest, or according to who volunteers). A mock trial generally has the following actors:

    Judge
    Clerk -- Assistant to Judge
    Team of State Prosecutors (2-4)
        (In civil cases -- Plaintiff's Counsel)
    Team of Defense Attorneys (2-4)
        (In civil cases -- Respondent's Attorneys)

The Accused or Defendant
Witnesses
Panel of Jurors (6, 8, 12)
    (Including Jury Foreman)
Alternate Jurors (2-4)
Court Observers
    (Assign "understudy" roles)

3. Committees should then be formed and permitted to meet to prepare for the enactment. These include:

The Committee for the State
    (Plaintiff in civil case) - attorneys and their witnesses
The Committee for the Defendant
    (Respondent in civil case) - attorneys, their witnesses, and defendant
The Research Committee
    The judge, court clerk, jurors, and court observers might be assigned related readings (*i.e.,* selections on the functions of a jury, a judge, attorneys, or on other cases involving similar circumstances).

4. During this preparation time, the instructor should make sure each class member understands:

   * His or her role in the enactment.
   * The kinds of activities they may engage in.
   * The sequence of events in the trial.

5. Role assignments should be explained and the following information stressed:

   A. Judge: Your main job is to preside over the trial. Your tasks include the following:

      * To make sure the trial proceeds along the predetermined sequence of events.
      * To rule on objections by opposing attorneys and reprimanding any attorney for improper behavior.
      * You are most likely to be called upon to take action on the following:

        - An attorney referring to the other side's position -- generally negatively -- in the opening statement to the jury. In this case, issue a warning; ask the jury to please disregard the remarks.
        - An attorney harassing the other side's witnesses. This might include (a) actually calling them "stupid" or "dishonest" or implying that they are, and (b) terming their answers to certain questions as "ridiculous," "foolish," or "untrue." In these cases, generally wait for an objection, then issue a warning and ask the jury to disregard the comment.

    - An attorney asking the other side's witnesses leading questions. This would include asking such questions as, "Isn't it a fact that?" or "You didn't really see that, did you?" In this situation, after an objection, ask the attorney to rephrase the question if he or she wishes and instruct the jury to disregard the question.
    - An attorney arguing with another attorney or with a witness. In this case, order the attorney(s) to stop.

- To maintain proper order in the courtroom (talking among jurors, witnesses, and observers should not be permitted).
- To instruct the jury as to what the law is and what it must do to make a decision following the closing statements by the attorneys.

Note: Rather than have a student act out the role of judge, the teacher may wish to obtain an attorney from the local bar association to take the role of judge. One fundamental advantage of this approach would be to make the debriefing portion of the trial a much more meaningful experience for the students.

B. Clerk: It is your job to:

- call the court to order and announce the case;
- call all witnesses to the stand and remind them that they are still under oath having been sworn in prior to the proceedings;
- announce when the judge is ready to charge or instruct the jury;
- assist the judge in any other way he or she deems necessary.

C. Attorney Teams:

- Each team will have the opportunity to:

    - make an opening statement to the jury;
    - question its own witnesses;
    - cross-examine the witnesses of the other team of attorneys;
    - present a closing argument to the jury.

- In making your opening remarks or statement to the jury:

    - state clearly and concisely what you intend to prove or show;
    - describe how your witnesses' testimony will support your arguments;
    - emphasize your position and ignore that of your opponents.

- In questioning your own (friendly) witness:

  - have prepared clear and concise questions;
  - stress obtaining information that will only help your case;
  - have your witnesses be prepared to answer your questions directly/clearly/concisely (discourage rambling or excessive talk by the witnesses).

- In cross-examining the other team's (hostile) witnesses:

  - try to obtain information that will help your case;
  - use questions to point out any inconsistencies or contradictions in the witnesses' testimony and to raise doubt in the minds of the jury concerning particular witnesses' credibility;
  - avoid comments or remarks that might be threatening to a witness and make you appear hostile or unfair;
  - you may ask the other team's witnesses to answer leading questions (*i.e.*, "Isn't it a fact that?" or "You didn't really see that, did you?)"

- Should you harass a witness or ask a friendly witness leading questions, you can expect the other attorneys to object and the court to rule in their favor. You should do likewise if you feel the other attorneys are engaging in improper conduct.

- In presenting the closing arguments to the jury:

  - outline clearly and concisely for the jury the testimony that has supported your case;
  - indicate to the jury what it might conclude on the basis of the evidence that has been presented.

D. Witnesses

- General behavior and suggestions:

  - It is best to stick closely to the information contained in the script you have received;
  - The script represents your sworn testimony and is what the other side's attorneys will expect you to say in court;
  - Memorize the information contained in the script for you will not be able to refer to it during questioning;
  - If you say something that does not agree with the information contained in the script, the opposing attorneys are sure to point out the contradictions or inconsistency between your sworn testimony and what

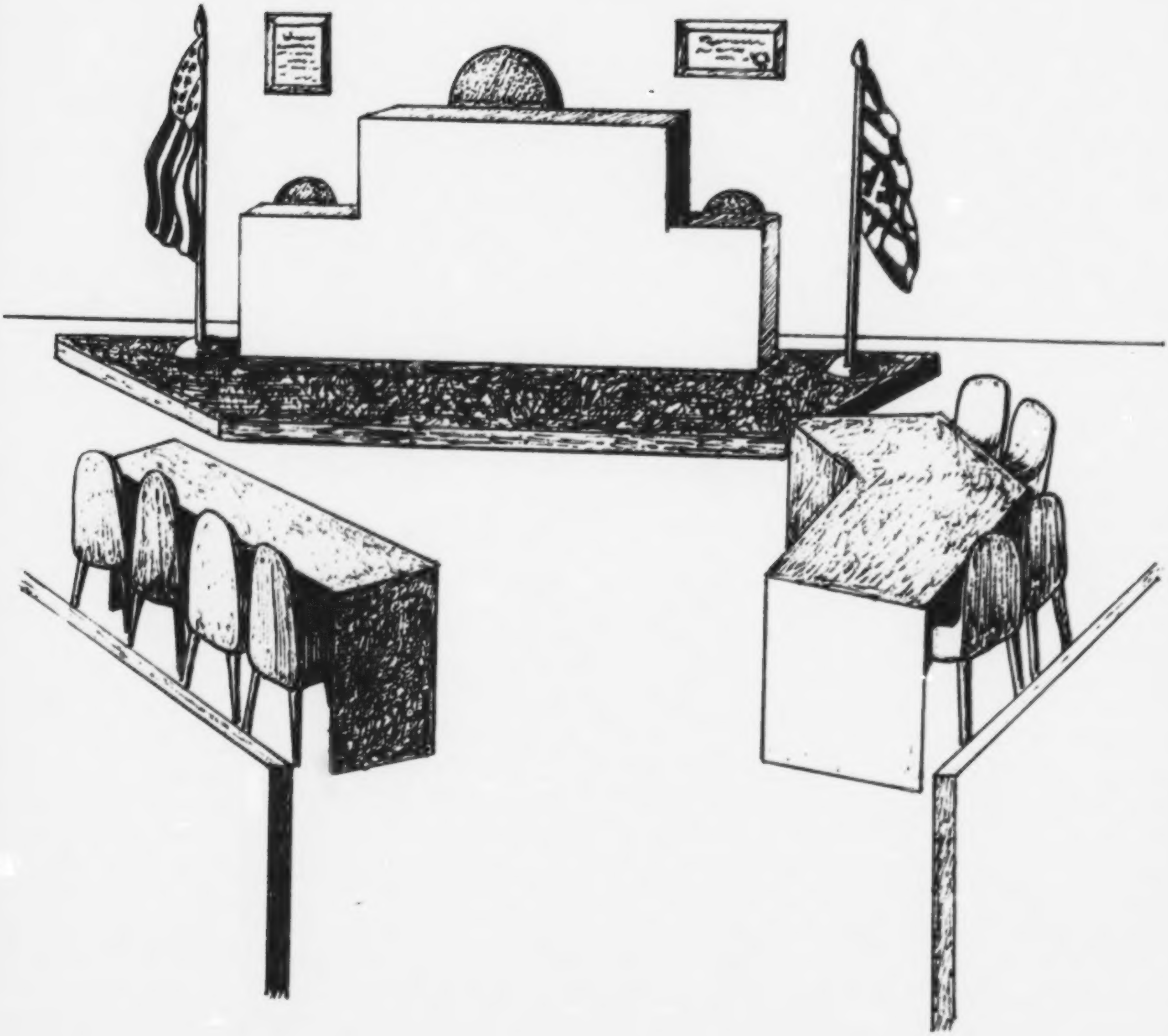
you have stated in court. This is likely to lessen your credibility with the jury and weaken your case.

E. Jury Members

- General behavior and suggestions:
  - It is essential that you listen carefully to what is said in court during the proceedings.
  - When you are asked to render a verdict, you should consider the case on the basis of (1) what the judge has instructed you to decide, and (2) what you think the evidence has shown.
  - After the judge's instructions to the jury, you will be seated in a circle. The jury foreman will ask members of the jury how he or she feels about the case and why he or she has taken a particular position. No discussion will be permitted until the entire jury has had an opportunity to speak. The jury foreman will then permit discussion and questions. Finally, he or she will take a formal vote by secret ballot and report the results to the court.

Enactment

The classroom should be set up to resemble a courtroom as illustrated below:



The actual enactment of a mock trial should follow the sequence of events outlined below:

1. Opening of the Court

Clerk: *Please rise. The Court of ______________ is now open and in session, the Honorable __________ presiding. The court will now hear the case of ______________v.______________. Are the attorneys ready? Proceed.*

2. Opening Statements by the Attorneys

State Prosecutor(s) (Civil case -- Plaintiff's Attorney(s)) first.
Defense Attorney(s) (Civil case -- Respondent's Attorney(s)) second.

3. State's (or in Civil case -- Plaintiff's) Witnesses

Clerk: *The Court now calls ________________ to the stand.*
Please be seated. Let me remind you, _______________, that you are under oath.
(Turning to attorney) *Proceed.*

State Prosecutor(s) (Civil case -- Plaintiff's Attorney(s)) questions witness.
Defense Attorney(s) (Civil case -- Respondent's Attorney(s)) cross-examines witnesses.

4. Defense (or in Civil case -- Respondent's) Witnesses

Clerk: *The Court now calls ________________ to the stand.*
Please be seated. Let me remind you, ________________, that you are under oath.
(Turning to the attorney) *Proceed.*

Defense Attorney(s) (Civil case -- Respondent's Attorney(s)) questions witnesses.
State Prosecutor(s) (Civil case -- Plaintiff's Attorney(s)) cross-examines witnesses.

5. Closing Arguments

Defense Attorney(s) (Civil case -- Respondent's Attorney(s)) first.
State Prosecutor(s) (Civil case -- Plaintiff's Attorney(s)) second.

6. Instructions to the Jury

Clerk: *The Court will now charge the jury.*

Judge proceeds to instruct the jury. Recess court for deliberation.

7. Jury Deliberation

Place the members of the jury in an inner circle. Place other members of the class in a second circle facing outward. Those in the outer circle are only to listen to the deliberations.

8. Verdict

Clerk: *Please rise. The Court of ______________ with the Honorable ____________ presiding is now in session.*

Judge: *Has the jury reached a verdict? Please hand the verdict to the Clerk of the Court.*

Have the Clerk bring the verdict to you. Read it to yourself. Then ask the defendant to rise. Depending on the verdict, say:

The jury finds you innocent of the charges.

or

The jury finds you guilty of the charges.

or, in a civil case,

The jury finds in favor of the Plaintiff.

or

The jury finds in favor of the Defendant.

The Court is now adjourned.

Below is listed the suggested time frame for each part of the trial:

Opening:	5 minutes for each side
Direct:	7 minutes for each side
Cross:	4 minutes for each side
Closing:	5 minutes for each side

Some of the things that are most difficult for team members to learn to do are:

1. to decide which points are the most important to prove their side of the case and to make sure such proof takes place;
2. to tell clearly what they intend to prove in an opening statement and to argue effectively in their closing statement that the facts and evidence presented have proven their case;
3. to follow the formality of court, *e.g.*, standing up when the judge enters, or when addressing the judge; calling the judge "Your Honor," etc;
4. to phrase questions on direct examination that are not leading (carefully review the rules of evidence and watch for this type of questioning in practice sessions);
5. to refrain from asking so many questions on cross-examination that well-made points are lost. When a witness has been contradicted or otherwise discredited, student attorneys tend to ask additional questions, which often lessens the impact of points previously make. (Stop...recognize what questions are likely to require answers that will make good points for your side. Rely on the use of these questions. Avoid pointless questions!!!);
6. to think quickly on their feet when a witness gives an unexpected answer, an attorney asks unexpected questions, or a judge throws questions at the attorney or witness. (Practice sessions will help prepare for this.)

Debriefing

The debriefing is a critical part of the mock trial experience. If an attorney is used as the judge, he or she can cover aspects of the trial in terms of the elements of the presentation (opening, direct cross, etc.). The attorney can also answer any questions regarding the case itself and/or the trial procedure in general.

If a student played the role of the judge, debriefing of the trial would be conducted by the teacher.

In debriefing a mock trial, the aspects of the enactment which an instructor might consider in the ensuing class discussion include an analysis of:

- the experiences and feelings of the participants;
- the roles of the character (*e.g.*, witness, attorney) and procedures found in the courtroom drama;
- the legal case itself.

Some pivotal questions that might be used to promote class discussion and student analysis of the enactment are presented below:

1. Who are the major characters or participants in a trial?
2. What do you think is the purpose or function of each? Is each important? Explain.
3. How well did the participants in the mock trial fulfill their roles?
4. What would you have done differently?
5. What legal questions or issues were raised by the case?
6. What main arguments did the defense present?
7. What main arguments did the state (plaintiff) present?
8. What evidence did the state (plaintiff) present in support of its arguments?
9. What evidence did the defense present in support of its arguments?
10. Do you feel the defense made a good presentation? Why or why not?
11. Do you feel the state (plaintiff) made a good presentation? Why or why not?
12. Did you agree or disagree with the verdict? Why?
13. If the jury returned a verdict of guilty, do you think that the defendant might have grounds for an appeal? Why?

Some Additional Practical Hints

If time is a factor or a serious problem in staging a mock trial, an instructor might:

- ask his or her students to prepare for the enactment during a free period or after school;
- place specified time limits on each aspect of the simulation-role play exercise.

If there is concern over whether or not the trial can be staged successfully, even with adequate preparation periods, the teacher might:

- assign the key roles in the enactment to those students who have the most ability and/or interest in the project;
- assume the role of judge and preside over the trial to insure that the enactment proceeds correctly;
- invite an actual judge or attorney to preside over the enactment.

Since one of the goals of a mock trial is to provide a procedural learning experience for the class, it is important that students be exposed to a basic study of the courts as well as the case study and adversary approaches. The more comfortable students feel about the fundamentals of our legal system the more profitable the learning experience will be.

Note that the jury's verdict is an important aspect of the mock trial. However it should not in any way detract from a careful analysis of how and why the trial proceeded as it did. It is also nonproductive to have the class get involved in a lengthy discussion on the "rightness" or "wrongness" of the verdict. Have the class center its attention on the major points outlined in this debriefing.

LEARNING ABOUT MARYLAND'S COURTS

A Teaching Unit

LESSON 1

SUBJECT: PRACTICAL LAW

LESSON: The Maryland Court System

OBJECTIVE: The student will be able to list and explain the jurisdictions of the various courts that make up the Maryland Court System.

MOTIVATION: On our court visit, you will be going from one court to another. Therefore, you will need to know in which court you are and the kind of cases handled there.

MATERIALS: Make a transparency of a non-labeled diagram of the Maryland Court System.
Make a copy of the non-labeled diagram of the Maryland Court System for each student.

PRESENTATION:

Use the non-labeled diagram of the Maryland Court System on the overhead projector.

Label the transparency as you discuss each court and its functions.

Have students label their diagram and take notes as you discuss the court system.

REVIEW: Give students the facts in different case situations. Have them decide which court the case would be heard and why. What if they appealed? Give them a case that can be taken through the entire system. Have them take it through to the Supreme Court. (There are some cases in the Street Law text.) Use the worksheets provided for review.

ASSIGNMENT: Have students briefly describe one case that could be heard at each level of the Maryland Court System.

RESOURCES: Annual Report of the Maryland Judiciary
The Maryland Manual
Street Law
Street Law - Teacher's Manual

The District Court**

The District Court of Maryland was created as the result of the ratification in 1970 of a constitutional amendment proposed by the legislature in 1969.

The District Court began operating on July 5, 1971, replacing a miscellaneous system of trial magistrates, people's and municipal courts. It is a court of record, is entirely State funded, and has statewide jurisdiction. District Court judges are appointed by the Governor and confirmed by the Senate. They do not stand for election. The first Chief Judge was designated by the Governor, but all subsequent chief judges are subject to appointment by the Chief Judge of the Court of Appeals. The District Court is divided into twelve geographical districts, each containing one or more political subdivisions with at least one judge in each subdivision.

As of July 1, 1988, there were 93 District Court judgeships, including the Chief Judge. The Chief Judge is the administrative head of the Court and appoints administrative judges for each of the twelve districts, subject to the approval of the Chief Judge of the Court of Appeals. A chief clerk of the Court is appointed by the Chief Judge. Administrative clerks for each district are also appointed as are commissioners who perform such duties as issuing arrest warrants and setting bail or collateral.

The District Court has jurisdiction in both the criminal, including motor vehicle, and civil areas. It has little equity jurisdiction and has jurisdiction over juvenile cases only in Montgomery County. The exclusive jurisdiction of the District Court generally includes all landlord/tenant cases; replevin actions; motor vehicle violations; criminal cases if the penalty is less than three years imprisonment or does not exceed a fine of $2,500, or both; and civil cases involving amounts not exceeding $2,500. It has concurrent jurisdiction with the circuit courts in civil cases over $2,500 to, but not exceeding, $10,000; and concurrent jurisdiction in misdemeanors and certain enumerated felonies. Since there are no juries provided in the District Court, a person entitled to and electing a jury trial must proceed to the circuit court.

**Source: Annual Report of the Maryland Judiciary, 1988-1989.

The Circuit Courts*

The Circuit Courts are the highest common law and equity courts of record exercising original jurisdiction within the State. Each has full common law and equity powers and jurisdiction in all civil and criminal cases within its county and all the additional powers and jurisdiction conferred by the Constitution and by law, except where by law jurisdiction has been limited or conferred upon another tribunal.

In each county of the State and in Baltimore City, there is a circuit court which is a trial court of general jurisdiction. Its jurisdiction is very broad, but generally it handles the major civil cases and more serious criminal matters. The Circuit Court also decides appeals from the District Court and from certain administrative agencies.

The courts are grouped into eight geographical circuits. Each of the first seven circuits is comprised of two or more counties while the Eighth Judicial Circuit consists of Baltimore City. On January 1, 1983, the former Supreme Bench was consolidated into the Circuit Court for Baltimore City.

As of July 1, 1988, there were 114 Circuit Court judges with at least one judge for each county and 24 in Baltimore City. Unlike the other three court levels in Maryland, there is no chief judge who is administrative head of the circuit courts. However, there are eight circuit administrative judges appointed by the Chief Judge of the Court of Appeals who perform administrative duties in each of their respective circuits. They are assisted by county administrative judges.

Each Circuit Court judge is initially appointed to office by the Governor and must stand for election at the next general election following, by at least one year, the vacancy the judge was appointed to fill. The judge may be opposed by one or more members of the bar. The successful candidate is elected to a fifteen-year term of office.

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*Source: Annual Report of the Maryland Judiciary, 1988-1989.

The Court of Special Appeals*

The Court of Special Appeals was created in 1966 as Maryland's intermediate appellate court. Its creation was the result of a rapidly growing caseload in the Court of Appeals which had caused a substantial backlog to develop in that Court.

The Court of Special Appeals sits in Annapolis and is composed of thirteen members: a chief judge and twelve associates. One member of the Court is elected from each of the first five Appellate Judicial Circuits while two members are elected from the Sixth Appellate Judicial Circuit (Baltimore City). The remaining six members are elected from the State at large. As in the Court of Appeals, members of the Court of Special Appeals are appointed by the Governor and confirmed by the Senate. They also run on their records without opposition for ten-year terms. The Governor designates the Chief Judge of the Court of Special Appeals.

Unless otherwise provided by law, the Court of Special Appeals has exclusive initial appellate jurisdiction over any reviewable judgment, decree, order or other action of a circuit court and generally hears cases appealed directly from the circuit courts. The judges of the court are empowered to sit in panels of three. A hearing or rehearing before the Court en banc may be ordered in any case by a majority of the incumbent judges of the Court. The Court also considers applications for leave to appeal in such areas as post conviction, habeas corpus matters involving denial of or excessive bail, inmate grievances, and appeals from criminal guilty pleas.

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*Source: Annual Report of the Maryland Judiciary, 1988-1989.

The Court of Appeals*

The Court of Appeals is the highest tribunal in the State of Maryland. It was created by the Constitution of 1776. In the early years of its existence, the Court sat in various locations throughout the State, but since 1851 it has sat only in Annapolis. The Court is composed of seven judges, one from each of the first five Appellate Judicial Circuits and two from the Sixth Appellate Judicial Circuit (Baltimore City). After initial appointment by the Governor and confirmation by the Senate, members of the Court run for office on their records, unopposed. If a judge's retention in office is rejected by the voters or there is a tie vote, that office becomes vacant and must be filled by a new appointment. Otherwise, the incumbent judge remains in office for a ten-year term. The Chief Judge of the Court of Appeals is designated by the Governor and is the constitutional administrative head of the Maryland judicial system.

As a result of legislation effective January 1, 1975, the Court of Appeals hears cases almost exclusively by way of certiorari, a discretionary review process. That process has resulted in the reduction of the Court's formerly excessive workload to a more manageable level, thus allowing the Court to devote more time to the most important and far-reaching issues.

The Court may review cases already decided by the Court of Special Appeals or bring up for review cases filed in that court before they are decided. In addition, the Court of Appeals has exclusive jurisdiction over appeals in which a sentence of death is imposed. The Court of Appeals may also review cases from the circuit court level if those courts have acted in an appellate capacity with respect to an appeal from the District Court. The Court is empowered to adopt rules of judicial administration, practice, and procedure which will have the force of law. In addition, it admits persons to the practice of law, reviews recommendations of the State Board of Law Examiners and conducts disciplinary proceedings involving members of the bench and bar. The Court of Appeals may also decide questions of law certified by federal and other state appellate courts.

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*Source: Annual Report of the Maryland Judiciary, 1988-1989.

QUIZ OR HANDOUT

Determine what type of court would have jurisdiction in the following cases:

1. As a result of an auto accident, Jacob sues Alice for $35,000.
2. Jim sues Joe for not paying the $1,000 damages in an auto accident.
3. James is arrested in Baltimore City for selling souvenirs without a license.
4. John is arrested for armed robbery.
5. Jane, who lives with Sue in Upper Marlboro, sues her mother for $100.
6. John has his armed robbery conviction reviewed.

Answers:

1. Circuit Court
2. District Court
3. District Court
4. Circuit Court
5. District Court or Small Claims Court
6. Court of Special Appeals or Court of Appeals

STUDENT ACTIVITY

Decide whether these cases would be civil or criminal.

1. Greg agreed to cut June's grass for $25. After he finished, June only paid him $15.

2. As Pam exited from the Metro, a young man snatched her purse and fled up the escalator.

3. Sally needs a new coat. She goes to Allen's Department Store, tries one on, and then leaves without paying.

4. James borrowed a compact disc player from Sue for a party. Bill, having had too much to drink, fell and broke the CD player.

5. On his way home from McDonald's, Joe tossed the trash out the car window.

6. Sophie slipped her husband some arsenic so that she could collect his $100,000 life insurance.

7. Bill wanted to save his gas money so he siphoned gas from Greg's parked car without permission.

8. Cheryl and Ed sold the Brooklyn Bridge to the elderly Ms. Trustone.

9. Chip picked up Alice's daughter from the day care center and refused to give her to Alice without a $1,000 payment.

10. Mr. Smith constructed a privacy fence one foot on the property of Mr. Jones.

Answers:
1. civil
2. criminal
3. criminal
4. civil
5. criminal
6. criminal
7. criminal
8. criminal
9. criminal
10. civil

ISSUE OF FACT or LAW ACTIVITY

ISSUE OF FACT: *Arises when a fact is maintained by one party and is controverted by the other in the pleadings.*

ISSUE OF LAW: *Arises where evidence is undisputed and only one conclusion can be drawn there from.*

Decide whether each of the following is an issue of law heard in an appellate court or an issue of fact heard in a trial court. Put an "A" for appellate or a "T" for trial court.

_____ 1. Mike was charged with shoplifting.

_____ 2. You believe that a new law passed by the General Assembly is unconstitutional.

_____ 3. Alice wishes to appeal the finding of the District Court Judge in her shoplifting case.

_____ 4. Mr. Jones believes that the fence his neighbor constructed is on his property.

_____ 5. Joe was arrested for speeding and drunken driving, but he believes the charges are wrong.

_____ 6. In Jane's felony trial, she believes that the judge allowed illegally obtained evidence to be presented.

_____ 7. You were arrested along with your friend who was driving a stolen automobile.

_____ 8. Jill believes that the all-male jury was not impartial enough to render an unbiased decision in her trial.

_____ 9. Gino's confession was used in his trial. However, he is upset because his lawyer was not there when he talked to the police.

_____10. Gail believes that the used car dealer did not honor the 90-day or 3000 mile warranty on the car she bought.

Answers:
1. A
2. T/A
3. A
4. T
5. T
6. A
7. T
8. A
9. A
10. T

LESSON 2

SUBJECT: PRACTICAL LAW

LESSON: Physical Setting of the Courtroom

OBJECTIVE: The student will be able to correctly label the physical setting of the courtroom and list the participants in the trial.

MOTIVATION: You will know what the function of each person in the courtroom is by knowing where they are seated.

MATERIALS: Non-labeled transparency of the courtroom setting on an overhead projector.

Label the transparency as you discuss the setting (who, where, why?) and the participants' roles.

During the discussion, have the students label and take notes on their unlabeled copy of the diagram.

Assign students roles (Judge, States Attorney, etc.) and have them sit where they would in the courtroom. (Arrange classroom to represent a courtroom.)

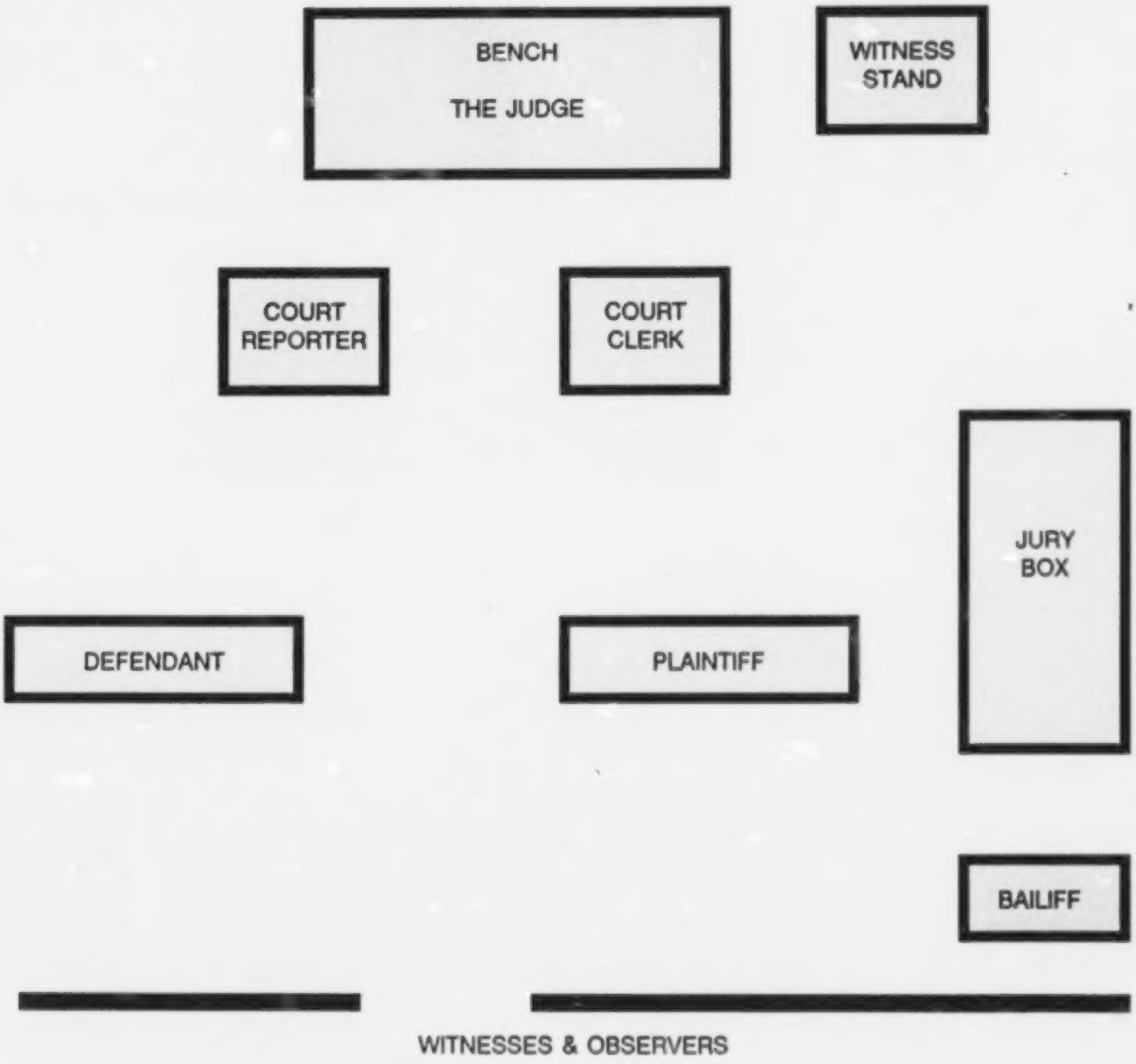
Have each student describe his or her role to the class. (Teacher and students help the role players as needed.)

REVIEW: Give students an unlabeled diagram of a courtroom and have them label the parts and give a brief description of the roles of the participants of a trial.

ASSIGNMENT: Have students think of a courtroom scene from a movie or television program they have seen. Have them answer the questions: Was the courtroom in the program arranged like we discussed in class? Are all courtrooms arranged alike? Why?

RESOURCE: Street Law Mock Trial Manual
Street Law Teacher's Manual

The layout of the courtroom is designed to allow all the participants in the trial (the defendant, counsels, jurors, and judge) to observe all the proceedings.

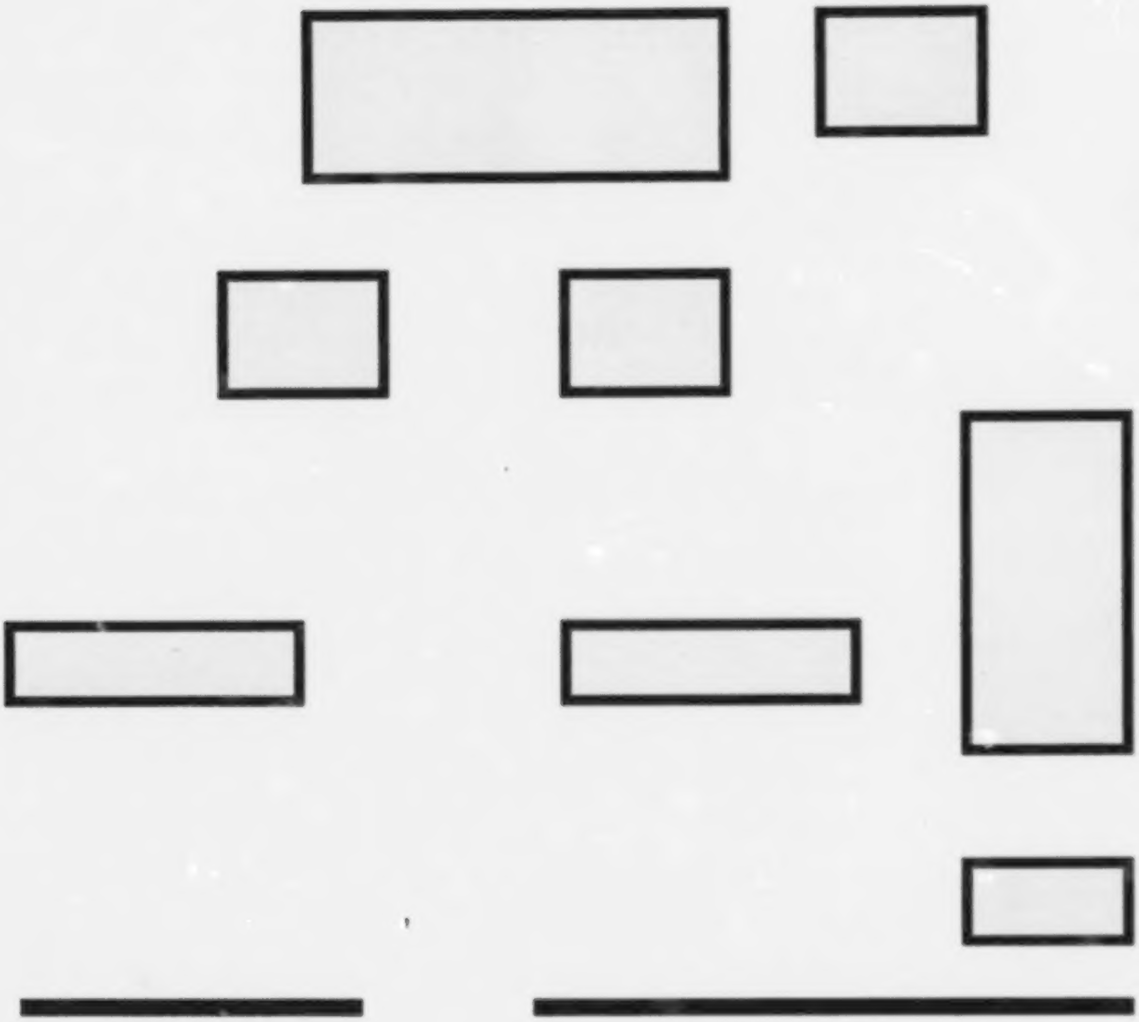

BENCH
THE JUDGE
WITNESS STAND
COURT REPORTER
COURT CLERK
JURY BOX
DEFENDANT
PLAINTIFF
BAILIFF
WITNESSES & OBSERVERS

This diagram shows how a courtroom is usually arranged. However, many are reversed with the jury box on the left hand side of the room as illustrated in the handout. In that case, the location of the Defendant and Plaintiff/Prosecutor would be reversed.

The Prosecutor/Plaintiff is always seated nearest to the jury box.

The Defendant is always seated farthest from the jury box.

COURTROOM DIAGRAM



Correctly label the diagram.

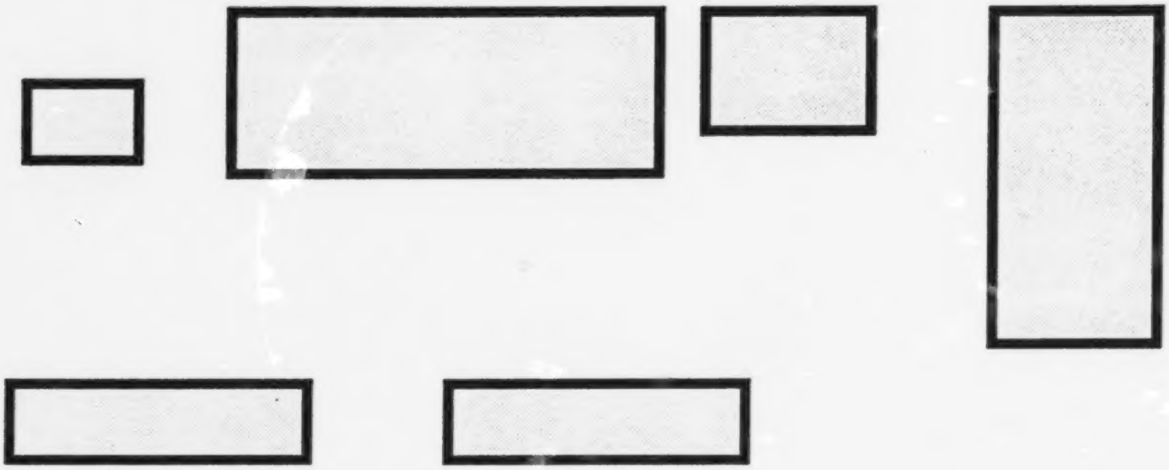
Answer the following questions:

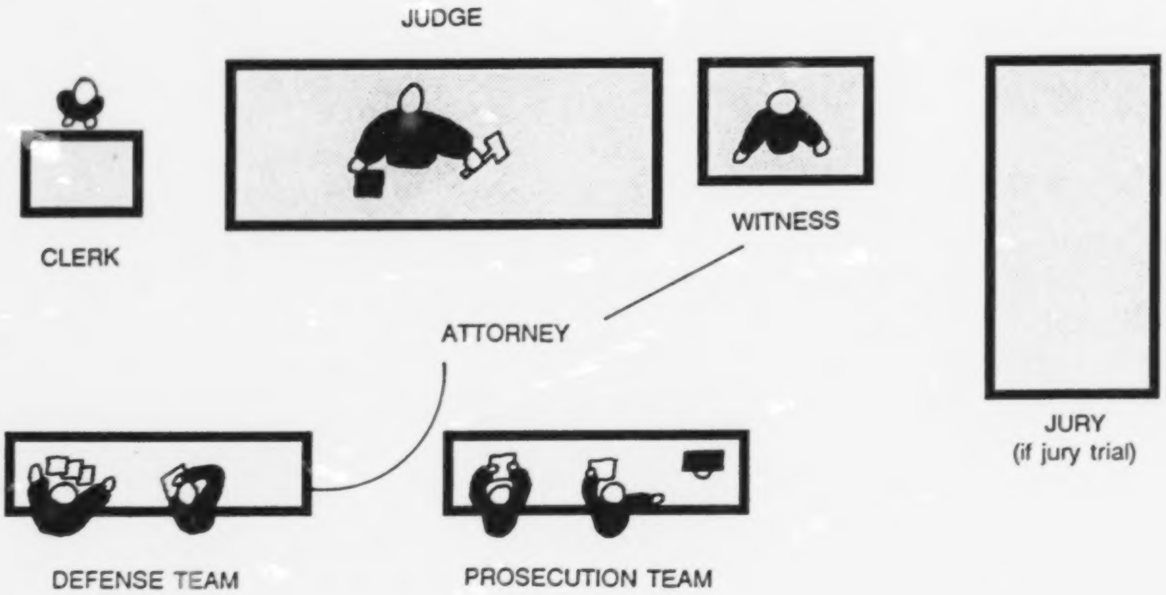
1. The Defendant is always seated ________ away from the jury box.

2. The Prosecutor/Plaintiff is always seated ________ to the jury box.

Answers:
1. farthest
2. nearest

COURTROOM DIAGRAM*




JUDGE
CLERK
WITNESS
ATTORNEY
JURY
(if jury trial)
DEFENSE TEAM
PROSECUTION TEAM

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*Source: Street Law Mock Trial Manual.

LESSON 3

SUBJECT: PRACTICAL LAW

LESSON: Watching a Trial

OBJECTIVE: Students will be able to give a brief description of the roles played by each participant in the courtroom.

MOTIVATION: For the court visit, the students will know what each participant does in the trial.

MATERIALS: Bill of Rights in Action Series: "Story of a Trial" or video excerpt.
Teacher-made worksheet for students.

PRESENTATION:

Review Lesson 1 using the courtroom diagram on the overhead projector.

Show students the movie "Story of a Trial" or an excerpt from a television program or movie where there is a good courtroom scene.

Stop movie throughout and discuss each participant's role and responsibility - point out any differences between the movie scenes and the Maryland Court System.

Provide students with a list of participants on which they take notes as you discuss the roles and responsibilities of each participant.

REVIEW: Give students a worksheet that briefly describes roles and/or responsibilities of participants in a trial. Have students label the participants from the roles.

ASSIGNMENT: Have students put the participants list in the order in which they think they come in the trial procedure. Have them explain their reasoning.

RESOURCES: Street Law Text
Street Law Teacher's Manual

PARTICIPANTS IN A TRIAL

From the brief descriptions of the roles of participants in a trial, label the participants. (There can be more than one answer for some of the roles.)

1. Delivers closing argument -

2. Cross-examines the prosecution witness -

3. Gives jury instructions -

4. Direct-examination of prosecution witness -

5. Gives opening statement -

6. Cross-examines defense witness -

7. Calls court to order -

8. Marks exhibits for court -

9. One accused of crime -

10. Direct-examines defense witness -

11. Deliberates and makes its decision -

12. Guards the accused -

Answers
1. Defense/Plaintiff (Prosecutor)
2. Defense
3. Judge
4. Plaintiff (Prosecutor)
5. Plaintiff (Prosecutor)
6. Plaintiff (Prosecutor)
7. Bailiff
8. Court Clerk
9. Defendant
10. Defense
11. Jury
12. Bailiff/Judge

LESSON 4

SUBJECT: PRACTICAL LAW

LESSON: Steps In A Trial (This lesson may take two days.)

MOTIVATION: As we visit the various courtrooms, we will see trials in various stages of progress. In order to understand what is going on, we need to know what stage in the trial we are observing.

MATERIALS: Transparency listing the steps in a trial.

PRESENTATION:

Give a brief lecture on the adversary system and its purpose - to arrive at an unbiased truth or decision. Have students take notes and ask questions.

Have students role-play a dispute. Have witnesses tell what they saw. They will not all agree. Discuss ways this dispute can be settled. (This is what a court does.)

Have a transparency listing the steps in a trial. Discuss each step and its objective. Have students copy the steps and take notes on the objectives.

REVIEW: Give students a handout of a brief and relatively simple case study. Have them develop direct and cross examination questions for the case. Also have them write a brief opening and closing for both sides. Have students role play their work in small groups.

ASSIGNMENT: Give students a handout of trial procedures listed out of order. They are to reorder the statements in the order that the events would occur in a courtroom trial. This handout may also be used as a quiz.

RESOURCES: Street Law Mock Trial Manual
Street Law Text
Street Law Teacher's Manual

STEPS IN A TRIAL[*]

1. OPENING STATEMENT by Plaintiff or Prosecutor -

2. OPENING STATEMENT by Defense -

3. DIRECT EXAMINATION by Plaintiff or Prosecutor -

4. CROSS-EXAMINATION by Defense -

5. MOTIONS -

6. DIRECT EXAMINATION by Defense -

7. CROSS-EXAMINATION by Plaintiff or Prosecutor -

8. CLOSING STATEMENT by Plaintiff or Prosecutor -

10. REBUTTAL ARGUMENT -

11. JURY INSTRUCTIONS -

12. VERDICT -

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[*] Adapted from: Constitutional Rights Foundation Mock Trial materials.

STEPS IN A TRIAL[*]

Re-order the following statements in the order that each event would occur in a trial.

Stipulated Facts: Greg is on trial for murder. His attorney is Ms. Jones. The State's Attorney is Mr. Bailer. Judge Johnson is presiding.

The Trial

A. Mr. Bailer delivers his closing argument.

B. Ms. Jones cross-examines the prosecution witness.

C. Judge Johnson gives the jury their instructions.

D. Mr. Bailer examines a prosecution witness.

E. Ms. Jones gives her opening statement (can be used in one of two places.)

F. The jury deliberates, makes its decision, and returns to the courtroom.

G. Mr. Bailer cross-examines the defense witness.

H. Court is called to order.

I. Mr. Bailer gives the prosecution's opening statement.

J. Judge Johnson releases or sentences the defendant.

K. Ms. Jones delivers her closing argument.

L. Ms. Jones conducts her direct examination of a defense witness.

Answers:

1. H
2. I
3. E
4. D
5. B
6. E and/or L
7. G
8. A
9. K
10. C
11. F
12. J

---

[*] Adapted from: Constitutional Rights Foundation Mock Trial materials.

STATE v. RANDALL[*]

Facts:

James and Arlene go to a night club and have a drink. Randall, who has been drinking, comes up to their table and, saying he knows Arlene, tries to talk to her. James gets angry and asks Randall to leave. An argument takes place and a fight ensues. The police are called and Randall is arrested for assault on James. Randall claims James caused the fight and that he was only defending himself.

Evidence:

There is no physical or documentary evidence for this trial.

Witnesses:

For the Prosecution
1. James
2. Arlene

For the Defense
1. Randall
2. Phillip, a waiter in the night club

Court:

After each side has had the opportunity to make an opening statement, examine its own witnesses, cross-examine the opponent's witnesses, and present a closing statement, the judge should instruct the jury as to the appropriate law in the case.

The instructions which follow can be shortened and/or simplified for classroom use.

Assault and Battery--Defined:

"Any intentional and unlawful threat or attempt to commit injury upon the person of another, when coupled with an apparent present ability so to do, and a display of force such as to place the victim in apprehension of immediate bodily harm, is held to constitute an assault. So an assault may be committed without actually touching or striking or doing bodily harm to another."

"Battery is any intentional and unlawful use of force upon the physical person of another. Thus the least touching of the person of another may constitute battery."

"Unlawful, as used in these instructions, means either contrary to law or without legal justification."

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[*] Permission is granted by the publisher to teachers to duplicate this mock trial and distribute it to their classes. Proper credit should be given to Street Law: A Course in Practical Law, Fourth Edition, West Publishing Co.

Self-Defense--Defined:

"Defendant would be criminally responsible only in the event that the striking of the complainant was unlawful. Not every striking of another person is unlawful. The law recognizes the right of an individual to defend his or her own person. One need not wait to do so at his or her peril, i.e. one need not delay his or her defense until unmistakably and in fact the supposed aggressor has made the first move. The test is reasonableness. A person with a reasonable fear for his or her own safety by reason of the conduct of another may take reasonable steps to defend himself or herself."

Once instructed, the jury should deliberate. They must decide from the evidence whether the prosecution has shown Randall to be guilty of assault beyond a reasonable doubt. The jury may deliberate in a separate room as they would in an actual trial. The jury foreperson writes the verdict on a slip of paper and hands it to the judge who reads it in "open court."

Witness Statements:

James: "I was just sitting in the place with Arlene, listening to the music, when this guy came up and started bothering her. I asked her if she knew him and she said 'No.' So I told him to split. The man was blind drunk and he kept bothering my girl. So I stood up and told him to leave before I called the manager. About that time he squared off on me and when I turned to walk away, he hit me."

Arlene: "I was with my boyfriend, James, when an old friend of mine, Randall, came over to our table. Randall had been drinking, and he grabbed my arm and told me to dance with him. James asked me if I knew him, and I said 'No' because James is very jealous. Then James told Randall to leave before some trouble got started. Randall didn't leave, and James stood up to argue with him. The next thing I knew, they were fighting."

Phillip: "This one guy was sitting with a girl when Randall went over to them. I know Randall because he plays in a band here occasionally. Randall only had two drinks. I know because I was waiting on his table. Randall motioned to the girl to dance, and then he held her arm up to help her up. The guy she was with got mad and started yelling. Randall smiled and told him to be cool. The guy jumped up and grabbed Randall. Randall hit him back, and they really went to it. After that, the cops came."

Randall: "I was at this club, walking around checking the place out. I saw Arlene. I had gone out with her for two years, but I hadn't heard from her in a couple of months. I went over to ask her how she was doing. I'd had a couple of drinks, but I wasn't even a little high. I asked her to dance, and the guy with her looked at me funny. I know Arlene well, and I knew she wanted to dance with me, so I took her by the arm. Then this guy sitting with her confronted me. I told him I didn't want any trouble. Then he jumped up and before I knew it, he grabbed me and hit me."

LESSON 5

SUBJECT: PRACTICAL LAW

LESSON: Jury Selection

OBJECTIVE: Students will be able to participate in a jury selection process so that they may experience the process. (Voir Dire - Jury selection - Lawyers make choices based on "to speak the truth" from candidates.)

MOTIVATION: Students will have empathy for those who are in the jury box in the court trials they visit.

PRESENTATION:

Have all students be a part of the jury except for a Judge, an Assistant State's Attorney, a defendant, and a defense attorney. Give the above group a case to role-play. (You may use the "Hit and Run Drunk Driving" case questions found on a following page or have the lawyers make up their own. The Jury Panel Form may also be used by the lawyers.)

Have all other students role play the average voting citizen. Give them a form on which to list their name, city, age, occupation, marital status, and children, if any. (Students should make up the information so that a cross-section of society is reflected in the group.) These will be drawn at random and placed in order drawn to create the order for selection, then have them role-play the selection process, Voir Dire: - Attorneys asking questions of each prospective juror and deciding if they want them to serve or not for cause or preemptory challenge. Allow twice as many strikes for the defense as the State. (You need 12 jurors and 1 or 2 alternates to comprise the jury. Determine the number of strikes according to the number of students in the panel.)

Seat jurors as they are accepted.

REVIEW: Debrief and discuss the role play. What happened, why, how did you feel, etc.? Review procedures for field trip.

ASSIGNMENT: Homework: Review the last week's work and prepare for the court visit.

RESOURCES: Street Law Text
Street Law Teacher's Manual
Jury Commissioner, Court House, Upper Marlboro, Md.
Welcome to Your Courts Juror's Guide and Orientation

SOME SUGGESTIONS FOR ATTORNEYS[*]

Each attorney should consider several factors concerning a juror's selection that may bias his or her ability to make a fair and accurate decision. They should include:

- age
- marital status and experience
- family make-up
- occupation of self and family members
- previous experience as party to a lawsuit, as juror, or a victim of a crime
- residence
- ethnic background
- physical appearance, including physical impairments
- memberships in religious or social organizations.

Keep in mind that your role in *voir dire* is to discover jurors' attitudes that are either antagonistic or sympathetic toward your side, and to establish a rapport with individual jurors. Think about what issues are most relevant. Phrase your question carefully and know why you are asking them. Remember that attitudes are formulated by many things including family values, experiences and media (especially television). Possible areas for questioning might include the following:

CRIMINAL CASES:

- attitudes toward police, law, punishment
- attitudes about certain kinds of defenses, such as self defense or insanity pleas
- experiences with police, courtroom, justice system

CIVIL CASES:

- attitudes toward corporations, insurance companies, etc.
- experiences as stockholder, victim of fraud, etc.

ALL CASES:

- occupation
- racist or sexist attitudes
- desire to serve and previous jury experience
- group membership (political, MADD, Chamber of Commerce, etc.)
- connections with parties involved in the case, direct or indirect
- beliefs that may directly/indirectly prejudice the case
- ability to weigh conflicting testimony
- knowledge about the case

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[*] Adapted from: "*We the Jury*", Constitutional Rights Foundation.

JURY SELECTION ROLES[*]

JUDGE: The judge presides during jury selection to see that the selection process is completed according to law. The prospective jurors are required to swear under oath that they will truthfully answer questions about their qualifications to serve as jurors in this particular case. The court clerk then calls fourteen jurors to come to the bar and the selection of the jury takes place.

LAWYER'S ROLE: The law allows the judge and the attorneys to excuse individuals from serving as jurors in a particular case for several reasons. If a lawyer wishes to have a juror excused, he or she must "challenge" the juror. There are two kinds of challenges:

FOR CAUSE: If the juror is a relative or employee of one of the participants in the case, he or she may be excused. Also, a juror may be dismissed for being prejudiced. There is no limit to the number of dismissals for cause.

PREEMPTORY: Each side (defense and prosecution/plaintiff) is allowed a specific number of preemptory challenges. This means that no cause need be stated for dismissal. The attorney simply tells the judge his desire to excuse a particular juror.

Each attorney should choose several questions from this list to ask each prospective juror, then should decide whether or not to seat that person.

Criminal questions involving a "Hit and Run Drunk Driving" case:

1. Do you have an opinion concerning the alleged facts in this case?
2. Do you believe alcohol affects different people in different ways?
3. Do you have a driver's license?
4. Have you ever been involved in an accident with a drunk driver?
5. Do you have relatives or close friends who have been involved in an accident with a drunk driver?
6. Do you belong to a religious or fraternal organization that condemns the sale or use of alcoholic beverages?
7. Are you related to anyone involved in this case?
8. Have media accounts of this case caused you to form an opinion about the defendant?

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[*] Credit for questions: Teaching About Our Jury System developed by North Carolina Administrative Office of the Courts.

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9. Have you ever served on a jury before in a criminal case?

10. Do you believe our system of justice is fair?

11. Would your previous jury experience prevent you from being an impartial juror in this case?

12. Is there any reason you can't sit as an impartial juror in this case?

13. Do you understand that the prosecution must show "beyond a reasonable doubt" that the defendant is guilty as charged?

14. Do you occasionally drink some sort of alcoholic beverage?

15. Have you ever driven a car while or after consuming an alcoholic beverage?

16. Have you ever had an unpleasant experience with someone who was drinking alcoholic beverages?

17. Do you believe a person can safely drive a car after drinking two beers?

18. Have you ever been convicted of a traffic violation?

19. Do you occasionally look away from the road while driving?

20. Will it be hard to recognize that opening and closing arguments by attorneys are not evidence in the case?

21. Will it be hard to disregard evidence that the judge rules as inadmissible after you've heard it in open court?

22. Do you believe that the defendant is innocent until proven guilty in this court?

23. Do you believe that youth, in general, drink too much and shouldn't be driving cars?

After the selection of the jury with one or two alternates, the judge swears in the jury to try the case.

Jury Panel Form

CASE#
CASE NAME:
PREMPTORY CHALLENGES

DATE:
DEPT:
TYPE:

ATTORNEY FOR STATE/PLAINTIFF:
ATTORNEY FOR DEFENDANT:

PROSECUTOR/PLAINTIFF
1 2 3 4 5 6 7 8 9 10 11
12 13 14 15 16 17 18 19
20

DEFENDANT
1 2 3 4 5 6 7 8 9 10 11
12 13 14 15 16 17 18 19
20 21 22 23 24 25 26 27
28 29 30 31 32 33 34 35
36 37 38 39 40

						ALTERNATE
						ALTERNATE

Develop a profile of an adult juror. Make decisions on the following information.
NAME:
CITY:
AGE:
OCCUPATION:
MARITAL STATUS:
CHILDREN, IF ANY:

LESSON 6

SUBJECT: PRACTICAL LAW

LESSON: Field Trip To Court House

OBJECTIVE: Students will observe the courtroom in action, fill in an observation card, and be ready to discuss what they observed.

MOTIVATION: To actually experience a courtroom in action.

MATERIALS: Courtroom Observation Form
Court Handout
Permission form for field trip
Practical Law Tour Schedule
Rules to observe during field trip

PRESENTATION:

Using the prearranged plans, take students to various courtrooms. (i.e. Bus to court house - coordinate day at court house - bus to return to school.)

Have students fill out handout as they observe courtrooms - answer questions on handout after visit.

REVIEW: Students are to answer the questions on their courtroom observation form.

ASSIGNMENT: Prepare for discussion for the next class period.

RESOURCES: Practical Law Court House Field Trip Coordinator
Supervisor of Social Studies

COURTROOM OBSERVATION RECORD

Court Visitation

Name:________________________________Date_______Pd._____

Check those applying to your observation:

___District Court

___Arraignment

___Civil Suit

___Traffic Court

___Misdemeanor Trial

___Circuit Court

___Preliminary/Hearing

___Felony Trial

___Jury Selection

Names of Presiding Judges

____

____

____

NOTES:

Read the questions on the back. Answer after your visit.

Answer the following:

1. What was the most important thing you observed or learned during your court visit?

2. How did you feel about the defense/prosecution?

3. What do you know now about what goes on in a courtroom that you did not know before?

4. How do you feel about our justice system after seeing a courtroom in action?

5. What was the purpose of that part of the trial which you saw?

6. Based upon your observation, what would you like to see changed in our legal system?

7. What questions do you have about what you observed?

CIRCUIT COURT LOCATIONS

More information regarding the Circuit Court in your county is available by contacting the Office of the Circuit Court.

COUNTY	PHONE NUMBER	COUNTY SEAT	ZIP CODE
Allegany	777-5922	Cumberland	21502
Anne Arundel	224-1397	Annapolis	21404
Baltimore County	494-2601	Towson	21204
Baltimore City	659-3733	Baltimore City	21202
Calvert	535-1600	Prince Frederick	20678
Caroline	479-1811	Denton	21629
Carroll	848-4500	Westminster	21157
Cecil	398-0200	Elkton	21921
Charles	645-0560	La Plata	20646
Dorchester	228-0480	Cambridge	21613
Frederick	694-1976	Frederick	21701
Garrett	334-2543	Oakland	21550
Harford	883-6000	Bel Air	21014
Howard	992-2111	Ellicott City	21043
Kent	778-4600	Chestertown	21620
Montgomery	251-7200	Rockville	20850
Prince George's	952-3318	Upper Marlboro	20870
Queen Anne's	758-1773	Centreville	21617
Saint Mary's	475-5621	Leonardtown	20650
Somerset	651-1555	Princess Anne	21853
Talbot	822-2611	Easton	21601
Washington	733-8660	Hagerstown	21740
Wicomico	543-6551	Salisbury	21801
Worcester	632-1221	Snow Hill	21863

PRINCE GEORGE'S COUNTY PUBLIC SCHOOLS

Upper Marlboro, Maryland

PRACTICAL LAW TOUR

Tentative Schedule

8:30 - 8:45	Arrival and Orientation
8:45 - 9:30	Briefing by Public Defender
9:30 - 9:45	Tour of Juvenile Lock-Up
9:45 - 11:45	Observation of District, Juvenile, and Circuit Court Sessions
11:45 - 12:30	Lunch (County Administration Building)
12:30 - 1:30	Briefing by Assistant State's Attorney
1:30 - 1:45	Evaluation
1:45	Dismissal to board bus

PRACTICAL LAW CLASS FIELD TRIP

Purpose

The Prince George's County Practical Law course has several purposes, the foremost being to help students develop a greater understanding of the structure of our legal system. The court visit is designed to supplement the Practical Law course and to provide the teacher with an additional educational option for students. The field trip enables students to become involved through direct interaction with local officials who are directly involved in the judicial process. Students should also be able to identify, develop, and maintain for life a good relationship with the Judiciary Branch of our government. In gaining information about the court system, the students also gain valuable on-site career knowledge.

RULES AND REGULATIONS FOR STUDENT PARTICIPANTS

1. Remember that you are representing not only yourself, but the entire school system during your stay in Upper Marlboro. Please act accordingly by observing the following rules:
    a. Be courteous at all times.
    b. Be prompt for appointments. You are expected to follow the schedule.
    c. Be responsible.

2. Business attire is the recommended mode of dress, with neatness of dress expected. Jeans and tee shirts are not permitted.

3. While in court and during public meetings, please remember that you are an observer. Keep your reactions private. Hold your comments until you are able to discuss them in an informal setting later. If you must exit, do so quietly and in small groups. If you are not sure of procedure for entering a courtroom, ask the bailiff and he or she will assist you.

4. During your interview sessions, be attentive and do not hesitate to ask questions. Remember that these individuals are giving time from their workday to help you learn about the court system. Please remember to thank the officials and staff when you leave.

5. Students will refrain from purchasing snacks and beverages during the day.

6. No liquids are to be placed in the waste baskets. Items such as coffee, soda, etc., should be disposed of in the drain system.

7. Uncovered beverage containers are not allowed in the offices.

SCHOOL NAME
ADDRESS
PHONE NUMBER

Organization ____________________ Sponsor:________________________________

I, as parent or guardian of ____
(name of child)

____
(Street Address) (City) (State) (Zip) (Phone no.)

member of group sponsored by ________________________________, consent to
(Sponsor's Name)

his/her participation in ____

to be held at ________________________ on ________, from _______ to _______.

I understand the proposed activity, the mode of transportation, the leadership accompanying the group and all other circumstances relating to this activity.

I certify that my child is in good health and can participate in all normal activities of the group with the following exceptions: _____________________________________

____.

I understand that reasonable measures will be taken to safeguard the health and safety of the group and that I will be notified as soon as possible in case of an emergency. However, in the event of sickness or accidents, I will not hold the group sponsor or High School responsible. In case of sickness or accident, I authorize the calling in of a doctor and/or the providing of other necessary medical services. I agree to pay for those medical services that seem vitally necessary.

Date: ____________ Signed: ____

Name of alternate person in case I cannot be reached in case of emergency:

Name: ____________________________ Phone no.: __________________________

Sponsor's Signature ____

APPROVED:____
(Principal's Signature)

LESSON 7

SUBJECT: PRACTICAL LAW

LESSON: Debriefing & Evaluation Of Courtroom Visit (Can be two-day lesson)

OBJECTIVE: Students, teacher, and lawyer, if possible, will debrief the courtroom observation.

MOTIVATION: To synthesize the last week of learning for the student.

PRESENTATION:

Using their experiences and the courtroom observation form they have filled out, have the students discuss the following questions:

What was the most important thing you observed during your court visit?

How did you feel about the defense/prosecution?

What do you now know about what goes on in a courtroom that you did not know before?

How do you feel about our justice system after seeing a courtroom in action?

What are some things you learned that you did not know before about courts and our legal system?

What impressed you most about our legal system?

What would you like to understand better?

What would you like to see changed in our legal system?

REVIEW: Have someone or several students summarize each lesson of the unit for the class.

ASSIGNMENT: Review and prepare for the test on the court system.

RESOURCES: County Bar Association
Maryland Bar Association
Phi Alpha Delta Law Fraternity International

TEACHER RESOURCE - Checklist for a Classroom Visit[*]

Here is a checklist of suggested procedures that should help ensure a successful classroom visit by a resource person. The key to success is to share information and ideas with your guest as far in advance as possible and to plan ahead for whatever special materials and equipment will be needed. This checklist can be adapted to fit a field-trip situation.

A. Briefing the resource person

1. Characteristics of the class or group (age, grade level, size, socioeconomic background, legal and political sophistication) ___

2. Context of presentation (topics currently or previously studied, where this presentation fits in, goals and objectives of presentations) ___

3. Restrictions and special considerations (amount of time available, size and setup of room, availability of special equipment, presence in the group of students with physical or other impairments) ___

4. Appropriate or preferred instructional strategies (lecture, lecture/discussion, panel discussion, debate, role-play, mock trial, case study, games, other) ___

B. Arranging for materials and equipment

5. Print materials (titles and quantities needed, whether duplication will be required, arrangements for necessary duplication) ___

6. Non-print materials (slides or filmstrips that might need to be ordered or reserved, any necessary audio-visual equipment, newsprint pads, marking pens, etc.) ___

C. Preparing the class

7. Readings or handouts that might need to be read and discussed before the visit ___

8. Questions that need to be prepared in advance by students or teacher ___

9. Procedures for special strategies (role play, mock trial) that require advance explanation or discussion ___

D. Planning for follow-up activities

10. Consultation with resource person about follow-up or extension activities and debriefing techniques or evaluation procedures ___

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[*] Adapted from: Involvement: A Practical Handbook for Teachers (Carroll County Public Schools and Maryland State Bar Association, 1976).

(Teacher sends to Lawyer)

TEACHER RESOURCE - Do's and Don'ts*

Here is some advice that law-related educators frequently give to lawyers and law students.

DO

- Translate "legalese" into English.
- Use a variety of methods and examples.
- Start where students are, and relate your presentation to their world (e.g., with a story involving young people and the law in yesterday's newspaper or on TV).
- At the beginning, briefly tell students about your work and explain the goals of your visit.
- Encourage questions.
- Be realistic about the legal system. (Note its weaknesses as well as its strengths, and show students how then can help improve it.)
- Let students see you as a real human being. (Share your interests, concerns and satisfaction, but don't bore them with the details of your specialty.)

DON'T

- Lecture at students.
- Use legal jargon.
- Try to cover a broad range of topics in one class period.
- Talk down to students.
- Tell a lot of "war stories".
- Read a prepared speech.
- Let one or two students dominate the discussion. (If this starts happening, call on other students or limit the number of times one student may speak.)
- Feel you must defend everything about the operation of the legal system. (An unrealistic, idealized portrait of the system can increase student cynicism; a thoughtful, balanced presentation should increase understanding.)
- Give advice on individual legal problems.

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*Reference: Phi Alpha Delta Law Fraternity International.

UNIT TEST

PART I

True or False

___1. The public defender is the prosecuting attorney for the state.

___2. All delinquent acts are crimes for which a youth may be accused.

___3. The docket is the place where the defendant sits during the trial.

___4. When a defendant is found guilty by a jury, a judge can impose any sentence he or she deems fair.

___5. The purpose of the *voir dire* is to prevent prejudiced jurors from serving on the jury.

___6. In Maryland all criminal and civil jury decisions must be unanimous.

___7. The jury boss is located on the same side of the courtroom as the plaintiff/prosecution.

___8. Appeal courts are original jurisdiction courts where a felony trial begins.

___9. A prosecutor may attempt to convict for a higher offense than that with which an accused person is charged.

___10. Opening statements are considered as evidence for the jury to weigh.

___11. Both the prosecution and the defense must agree to a court trial verses a jury trial.

___12. A minor 16 or over may be tried in court as an adult.

___13. The purpose of the jury is to decide if the rules of law are followed during the trial.

UNIT TEST

PART II

Matching Instructions: Place the letter for each person in the courtroom in the blank for each duty. Some people have several duties.

A. BAILIFF

B. DEFENDANT

C. JUDGE

D. COURT CLERK

E. WITNESS

F. PROSECUTOR /STATE'S ATTORNEY

G. COURT REPORTER

H. JURY

I. DEFENSE ATTORNEY

J. SHERIFF

___14. Gives an account of what happened.

___15. Delivers the first closing statement.

___16. Guards the defendant.

___17. Swears in the witnesses.

___18. Tries to show that the defendant is guilty through evidence.

___19. Records what is said in court.

___20. Tries to show that the evidence leaves the jury with reasonable doubt of the defendant's guilt.

___21. Decides the factual issues in the case.

___22. Can be cross-examined.

___23. Announces that court is in session.

___24. Can't be forced to testify.

___25. Sentences guilty defendants.

___26. Delivers the last opening statement.

___27. Rules on legal issues during the trial.

___28. Cross-examines the defendant.

___29. Has been accused of breaking the law.

___30. Maintains order in the courtroom.

UNIT TEST - ANSWERS

1. False
2. True
3. False
4. False
5. True
6. True
7. True
8. False
9. False
10. False
11. True
12. True
13. False
14. E
15. F
16. J
17. D
18. F
19. G
20. I
21. H
22. E
23. A
24. B
25. C
26. I
27. C
28. F
29. B
30. C, A

B. Constitution of Maryland. A Declaration of Rights, &C

THE parliament of Great Britain, by a declaratory act, having assumed a right to make laws to bind the Colonies in all cases whatsoever, and, in pursuance of such claim, endeavoured, by force of arms, to subjugate the United Colonies to an unconditional submission to their will and power, and having at length constrained them to declare themselves independent States, and to assume government under the authority of the people; - Therefore we, the Delegates of Maryland, in free and full Convention assembled, taking into our most serious consideration the best means of establishing a good Constitution in this State, for the sure foundation and more permanent security thereof, declare,

I. That all government of right originates from the people, is founded in compact only, and instituted solely for the good of the whole.

II. That the people of this State ought to have the sole and exclusive right of regulating the internal government and police thereof.

III. That the inhabitants of Maryland are entitled to the common law of England, and the trial by jury, according to the course of that law, and to the benefit of such of the English statutes, as existed at the time of their first emigration, and which, by experience, have been found applicable to their local and other circumstances, and of such others as have been since made in England, or Great Britain, and have been introduced, used and practiced by the courts of law or equity; and also to acts of Assembly, in force on the first of June 1774, except such as may have since expired, or may have been altered by acts of Convention, or this Declaration of Rights - subject, nevertheless, to the revision of, and amendment or repeal by, the Legislature of this State: and the inhabitants of Maryland are also entitled to all property, derived to them, from or under the Charter, granted by his Majesty Charles I. to Caecilius Calvert, Baron of Baltimore.

IV. That all persons vested with the legislative or executive powers of government are the trustees of the public, and, as such, accountable for their conduct; wherefore, whenever the ends of government are perverted, and public liberty manifestly endangered, and all other means of redress are ineffectual, the people may, and of right ought, to reform the old or establish a new government. The doctrine of non-resistance, against arbitrary power and oppression, is absurd, slavish, and destructive of the good and happiness of mankind.

V. That the right in the people to participate in the Legislature is the best security of liberty, and the foundation of all free government; for this purpose, elections ought to be free and frequent, and every man, having property in, a common interest with, and an attachment to the community, ought to have a right of suffrage.

VI. That the legislative, executive and judicial powers of government, ought to be forever separate and distinct from each other.

VII. That no power of suspending laws, or the execution of laws, unless by or derived from the Legislature, ought to be exercised or allowed.

VIII. That the freedom of speech and debates, or proceedings in the Legislature, ought not to be impeached in any other court or judicature.

IX. That a place for the meeting of the Legislature ought to be fixed. . .

X. That, for redress of grievances, and for amending, strengthening and preserving the laws, the legislature ought to be frequently convened.

XI. That every man hath a right to petition the Legislature, for the redress of grievances, in a peaceable and orderly manner.

XII. That no aid, charge, tax, fee, or fees, ought to be set, rated, or levied, under any pretence, without the consent of the Legislature.

XIII. That the levying taxes by poll is grievous and oppressive, and ought to be abolished; that paupers ought not to be assessed for the support of government; but every other person in the State ought to contribute his proportion of public taxes, for the support of government, according to his actual worth, in real or personal property within the State; yet fines, duties, or taxes, may properly and justly be imposed or laid, with a political view, for the good government and benefit of the community.

XIV. That sanguinary laws ought to be avoided, as far as is consistent with the safety of the State; and no law, to inflict cruel and unusual pains and penalties, ought to be made in any case, or at any time hereafter.

XV. That retrospective laws, punishing facts committed before the existence of such laws, and by them only declared criminal, are oppressive, unjust, and incompatible with liberty; wherefore no **ex post facto** law ought to be made.

XVI. That no law, to attaint particular persons of treason or felony, ought to be made in any case, or at any time hereafter.

XVII. That every freeman, for any injury done him in his person or property, ought to have remedy, for the course of the law of the land, and ought to have justice and the right freely and without sale, fully without denial, and speedily without delay, according to the law of the land.

XVIII. That the trial of facts where they arise, is one of the greatest securities of the lives, liberties and estates of the people.

XIX. That in all criminal prosecutions, every man hath a right to be informed of the accusation against him; to have a copy of the indictment or charge in due time (if required) to prepare for his defense; to be allowed counsel; to be confronted with the witnesses against him; to have process for his witnesses; to examine the witnesses, for and against him, on oath; and to a speedy trial by an impartial jury, without whose unanimous consent he ought not to be found guilty.

XX. That no man ought to be compelled to give evidence against himself, in a common court of law, or in any other court, but in such cases as have been usually practiced in this State, or may hereafter be directed by the Legislature.

XXI. That no freeman ought to be taken, or imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner destroyed, or deprived of his life, liberty, or property, but by the judgement of his peers, or by that law of the land.

XXII. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted, by the courts of law.

XXIII. That all warrants, without oath or affirmation, to search suspected places, or to seize any person or property, are grievous and oppressive; and all general warrants - to search suspected places, or to apprehend suspected persons, without naming or describing the place, or the person in special - are illegal, and ought not to be granted.

XXIV. That there ought to be no forfeiture of any part of the estate of any person, for any crime except murder, or treason against the State, and then only on conviction and attainder.

XXV. That a well-regulated militia is the proper and natural defense of a free government.

XXVI. That standing armies are dangerous to liberty, and ought not be raised or kept up, without the consent of the Legislature.

XXVII. That in all cases, and at all times, the military ought to be under strict subordination to and control of the civil power.

XXVIII. That no soldier ought to be quartered in any house, in time of peace, without the consent of the owner; and in time of war, in such manner only, as the Legislature shall direct.

XXIX. That no person, except regular soldiers, mariners, and marines in the service of this State, or militia when in actual service, ought in any case to be subject to or punishable by martial law.

XXX. That the independency and uprightness of Judges are essential to the impartial administration of justice, and a great security to the rights and liberties of the people; wherefore the Chancellor and Judges ought to hold commissions during good behavior; and the said Chancellor and Judges shall be removed for misbehavior, on conviction in a court of law . . . . That salaries, liberal, but not profuse, ought to be secured to the Chancellor and the Judges, during the continuance of their commissions. . . . No Chancellor or Judge ought to hold any other office, civil or military, or receive fees or perquisites of any kind.

XXXI. That a long continuance, in the first executive departments of power or trust, is dangerous to liberty; a rotation, therefore, in those departments, is one of the best securities of permanent freedom.

XXXII. That no person ought to hold, at the same time, more than one office of profit, nor ought any person, in public trust, to receive any present from any foreign prince or state, or from the United States, or any of them, without the approbation of this State.

XXXIII. That, as it is the duty of every man to worship God in such manner as he thinks most acceptable to him; all persons, professing the Christian religion, are equally entitled to protection in their religious liberty; wherefore no person, ought by any law to be molested in his person or estate on account of his religious persuasion or profession, or for his religious practice; unless, under colour of religion, any man shall disturb the good order, peace or safety of the State, or shall infringe the laws of morality, or injure others, in their natural, civil, or religious rights; nor ought any person to be compelled to frequent or maintain, or contribute, unless on contract, to maintain any particular place of worship, or any particular ministry; yet the Legislature may, in their discretion, lay a general and equal tax, for the support of the Christian religion; leaving to each individual the power of appointing the payment over of the money, collected from him, to the support of any particular place of worship or minister, or for the benefit of the poor of his own denomination, or the poor in general of any particular county: but the churches, chapels, glebes, and all other property now belonging to the church of England, ought to remain to the church of England forever. And all acts of Assembly, lately passed, for collecting monies for building or repairing particular churches or chapels of ease, shall continue in force, and be executed, unless the Legislature shall, by act, supercede or repeal the same: but no county court shall assess any quantity of tobacco, or sum of money, hereafter, on the application of any vestrymen or church-wardens; and every incumbent of the church of England, who hath remained in his parish, and performed his duty, shall be entitled to receive the provision of support established by the act, entitled "An act for the support of the clergy of the church of England, in this Province," till the November court of this present year, to be held for the country in which the parish shall lie, or partly lie, or for such time as he hath remained in his parish, and performed his duty.

XXXIV. That every gift, sale, or devise of lands, to any minister, public teacher, or preacher of the gospel, as such, or any religious sect, order or denomination, or to or for the support, use or benefit of, or in trust for, any minister, public teacher, or preacher of the gospel, as such, or any religious sect, order, or denomination - and every gift or sale of goods, or chattels, to go in succession, or to take place after the death of the seller or donor, or to or for such support, use, or benefit - and also every devise of goods or chattels to or for the support, use or benefit of any minister, public teacher, or preacher of the gospel, as such, or any religious sect, order, or denomination, without the leave of the Legislature, shall be void; except always any sale, gift, lease or devise of any quantity of land, not exceeding two acres, for a church, meeting, or other house of worship, and for a burying ground, which shall be improved, enjoyed or used only for such purpose - or such sale, gift, lease, or devise, shall be void.

XXXV. That no other test or qualification ought to be required, on admission to any office of trust or profit, than such oath of support and fidelity to this State, and such oath of office, as shall be directed by this Convention, or the Legislature of this State, and a declaration of a belief in the Christian religion.

XXXVI. That the manner of administering an oath to any person, ought to be such, as those of the religious persuasion, profession, or denomination, of which such person is one, generally esteem the most effectual confirmation, by the attestation of the Divine Being. . . . [special conditions for Quakers, Mennonites, and Dunkers to affirm or witness]

XXXVII. [Protection of the rights of the city of Annapolis under the Charter]

XXXVIII. That the liberty of the press ought to be inviolably preserved.

XXXIX. That monopolies are odious, contrary to the spirit of a free government, and the principles of commerce; and ought not to be suffered.

XL. That no title of nobility, or hereditary honours, ought to be granted in this State.

XLI. [Stipulation that previous resolves will be laws of State]

XLII. That this Declaration of Rights, or the Form of Government, to be established by this Convention, or any part of either of them, ought not to be altered, changed or abolished, by the Legislature of this State, but in such manner as this Convention shall prescribe and direct.

This Declaration of Rights was assented to, and passed, in Convention of the Delegates of the freemen of Maryland, begun and held at Annapolis, the 14th day of August, A.D. 1776

By order of the Convention.
Mat. Tilghman, **President**

Source: Francis N. Thorpe, ed. The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies, 7 vols. (Washington, D.C., Government Printing Office, 1909), III: 1686-91

THE CONSTITUTION OF THE UNITED STATES OF AMERICA

PREAMBLE

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution to the United States of America.

ARTICLE I

SECTION 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION 2. The House of Representatives shall be composed of Members chosen every second year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty-five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

[Representatives and direct Taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole Number of Free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.]* The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such manner as they shall by Law direct. The number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such vacancies.

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*changed by Section 2 of the Fourteenth Amendment.

The House of Representatives shall choose their Speaker and other Officers; and shall have the sole Power of Impeachment.

SECTION 3. The Senate of the United States shall be composed of two Senators from each State, [chosen by the Legislature thereof,]** for six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; [and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such vacancies.]***

No person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that state for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall choose their other officers, and also a ***President pro tempore***, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

SECTION 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators.

**changed by the Seventeenth Amendment.

***changed by the Seventeenth Amendment.

The Congress shall assemble at least once in every Year. and such Meeting shall be [on the first Monday in December,][****] unless they shall by Law appoint a different Day.

SECTION 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punch its Members for disorderly Behavior, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor at any other Place than that in which the two Houses shall be sitting,

SECTION 6. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

SECTION 7. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a Law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

[****] changed by Section 2 of the Twentieth Amendment.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

SECTION 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the Credit of the United States;

To regulate Commerce with foreign nations, and among the several States, and with the Indian tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, but securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that use shall be for a longer Term than two years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and Naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress.

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;--And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Office thereof.

SECTION 9. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The privilege of the Writ of ***Habeas Corpus*** shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No bill of Attainder or ***ex post facto*** Law shall be passed.

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another; nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince or foreign State.

SECTION 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress.

No State shall, without the Consent of Congress, Lay any duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

ARTICLE II

SECTION 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four years, and, together with the Vice President, chosen for the same Term, be elected, as follows

Each State shall appoint, in such Manner as the Legislature thereof may direct, a number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

The Electors shall meet in their respective States, and vote by Ballot for two persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately choose by Ballot one of them for President; and if no Person have a majority, then from the five highest on the list and said House shall in like Manner choose the President. But in choosing the President, the Votes shall be taken by States, the Representation from each State having one Vote; a quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the person having the greatest Number of Votes of Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall choose from them by Ballot the Vice President.

The Congress may determine the Time of choosing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty-five Years, and been fourteen Years a Resident within the United States.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the the period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation: "I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

SECTION 2. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion in writing of the principal Officer in each of the executive Departments, upon any subject relating to the Duties of their respective Offices, and he shall have Power to Grant Reprieves and Pardons for Offenses against the United States, except in cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States,'whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

SECTION 3. He shall from time to time give the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

SECTION 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

ARTICLE III

SECTION 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their offices during good Behavior, and shall, at stated Times, receive for their Services a Compensation which shall not be diminished during their Continuance in Office.

SECTION 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under the Authority; -- to all Cases affecting Ambassadors, other public Ministers and Consules; -- to Cases of admiralty and maritime Jurisdiction; --to Controversies to which the United States shall be a Party; -- to controversies between two or more States; -- between a State and Citizens of another State; -- Cetween citizens of different states; -- between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

SECTION 3. Treasons against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainded.

ARTICLE IV

SECTION 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the effect thereof.

SECTION 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

No Person held to Service or Labor in one State, under the Laws thereof, escaping into another, shall, in consequence of any Law or Regulation therein, be discharged from such Service or Labor, but shall be delivered up on Claim of the Party to whom such Service or Labor may be due.

SECTION 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or parts of States, without the Consent of the Legislatures of the States concerned as well as the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

SECTION 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

ARTICLE V

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as part of this constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article: and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

ARTICLE VI

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

ARTICLE VII

The Ratification of the Conventions of nine States shall be sufficient to the Establishment of this Constitution between the States so ratifying the Same.

Done in convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth. In Witness whereof We have hereunto subscribed our Names. [Signatures omitted.]

ARTICLES IN ADDITION TO, AND AMENDMENT OF, THE CONSTITUTION OF THE UNITED STATES OF AMERICA, PROPOSED BY CONGRESS, AND RATIFIED BY THE LEGISLATURE OF THE SEVERAL STATES, PURSUANT TO THE FIFTH ARTICLE OF THE ORIGINAL CONSTITUTION.

AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

AMENDMENT III

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

AMENDMENT IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V

No Person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

AMENDMENT VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

AMENDMENT VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMENDMENT IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

AMENDMENT X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

AMENDMENTS XI (1798)

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United Sates by Citizens of another State, or by Citizens or Subjects of any Foreign State.

AMENDMENTS XII (1804)

The Electors shall meet in their respective states and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in district ballots the person voted for as Vice President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate; -- The President of the Senate shall, in presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted; -- The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, as in the case of the death or other constitutional disability of the President.-- The person having the greatest number of votes as Vice President, shall be the Vice President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice President of the United States.

ARTICLE XIII (1865)

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XIV (1868)

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or an an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss of emancipation of any sales; but all such debts, obligations and claims shall be held illegal and voice.

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

AMENDMENT XV (1870)

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XVI (1913)

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

AMENDMENT XVII (1913)

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: ***Provided,*** That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

AMENDMENT XVIII (1919)

SECTION 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

SECTION 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

SECTION 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States BY the Congress.

AMENDMENT XIX (1920)

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XX (1933)

SECTION 1. The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon of the 3rd day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

SECTION 2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3rd day of January, unless they shall by law appoint a different day.

SECTION 3. If, at the time fixed for the beginning of the term of President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

SECTION 4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

SECTION 5. Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

SECTION 6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.

AMENDMENT XXI (1933)

SECTION 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

SECTION 2. The transportation or importation into any State, Territory, or Possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

SECTION 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

AMENDMENT XXII (1951)

SECTION 1. No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this Article shall not apply to any person holding the office of President when this Article was proposed by Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term.

SECTION 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

AMENDMENT XXIII (1961)

SECTION 1. The District constituting the seat of Government of the United States shall appoint in such manner as Congress may direct:

A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

SECTION 2. This Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XXIV (1964)

SECTION 1. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XXV (1967)

SECTION 1. In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

SECTION 2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

SECTION 3. Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

SECTION 4. Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

AMENDMENT XXVI (1971)

SECTION 1. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XXVII (Proposed)

SECTION 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.

SECTION 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

SECTION 3. This amendment shall take effect two years after the date of ratification.

GLOSSARY OF LEGAL TERMS*

A

ABSTRACT OF RECORD: An abbreviated but complete history of a case.

ACTION: Lawsuit; the legal demand for one's right asserted in court.

ACTION IN PERSONAM: A lawsuit against a person based on personal liability.

ACTION IN REM: A lawsuit to determine title to property.

ADJUDICATION: Giving a judgement or decree, also the judgement given.

ADVANCE SHEETS: Unbound copies of cases that will later be sent in bound form.

ADVERSARY SYSTEM: The system of trial practice in the U.S. and some other countries in which each of the opposing or adversary parties has full opportunity to present and establish its opposing contentions before the Court.

AFFIRM: When a higher Court declares that a lower Court's action was valid and correct.

ALLEGATION: The assertion, declaration, or statement of a party to an action, made in a pleading, setting out what he or she expects to prove.

AMICUS CURIAE: A friend of the Court; one who interposes and volunteers information upon some matter of law.

ANSWER: A pleading by which the defendant tries to dispute the plaintiff's right to recover by controverting the facts alleged by the plaintiff or the principle of law relied on by him, or both; or by asserting some defense which relieves the defendant of liability.

APPEAL: To take a case to a higher Court for review.

APPEARANCE: The formal proceedings by which a defendant submits himself to the jurisdiction of the Court.

APPELLANT: The party appealing a decision or judgement to a higher Court.

APPELLATE COURT: A Court which hears appeals and reviews lower Court decisions, generally on the lower Court record only.

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*Source: *Shaping American Democracy, Revised Edition 1990.* Public Citizenship Law-Related Education Program for the Schools of Maryland and Law, Youth and Citizenship Program of the New York State Bar Association.

APPELLEE: The successful party in the lower Court against whom an appeal is taken.

ARRAIGNMENT: In criminal practice, to bring the prisoner to Court in person to answer a charge.

AT ISSUE: Parties to a suit are at issue when they reach a point in the pleadings at which facts are alleged to exist by one side, and are denied by the other.

ATTORNEY OF RECORD: Attorney whose name appears in the permanent records or files of a case.

B

BAIL: Cash or other security placed on deposit with the Court to obtain the release of an arrested or imprisoned person, and, to guarantee his reappearance before the Court on a specific day.

BAIL BOND: A financial obligation signed by the accused and those who serve as sureties to guarantee his future appearance in Court.

BAILIFF: A Court attendant who keeps order and is responsible for the custody of the jury.

BENCH WARRANT: An order issued by the Court ("from the bench"), for the attachment or arrest of a person.

BEST EVIDENCE: Primary evidence; the best evidence which is available; any evidence falling short of this standard is secondary; e.g., an original letter is best evidence compared to a copy.

BILL OF PARTICULARS: A detailed statement of an event or item referred to in another legal paper.

BIND OVER: To hold on bail for trial.

BINDING INSTRUCTION: One in which the jury is told if they find certain conditions to be true they must find for the plaintiff, or defendant as case may be.

BRIEF: A written or printed document prepared by counsel to file in Court, usually setting forth both facts and law in support of his case.

BURDEN OF PROOF: In the law of evidence, the necessity or duty of proving a fact or facts in dispute.

C

CAPTION: The caption of a pleading, or other papers connected with a case in 'court, is the heading or introductory clause which shows the names of the parties, name of the court, number of the case, etc.

CAUSE: A suit, litigation or action--civil or criminal.

CERTIORARI: An order commanding judges or officers of a lower court to certify the record of a case for judicial review by an appellate court.

CHALLENGE FOR CAUSE: An objection to the qualifications of a juror for which a reason is given; usually on grounds of personal acquaintance with one of the parties or the existence of a bias which may affect the verdict.

CHALLENGE TO THE ARRAY: Questioning the qualifications of an entire jury panel, usually on the grounds of partiality or some fault in the process of summoning the panel.

CHAMBERS: Private office or room of a judge.

CHANGE OF VENUE: The removal of a suit begun in one county or district to another, for trial, or from one court to another in the same county or district.

CIRCUMSTANTIAL EVIDENCE: All evidence of indirect nature; the process of decision by which court or jury may reason from circumstances know or proved to establish by inference the principal fact.

CIVIL CASE: A case between two parties to remedy a private wrong.

CLERK: One who keeps the records of all proceedings, exhibits and administers the oath to jurors and witnesses.

COMITY: Courtesy, respect; usually used in the legal sense to refer to the proper relationship between state and federal courts.

COMMIT: To send a person to prison, mental heath facility, workhouse, or reformatory by lawful authority.

COMMON LAW: Law which derives its authority solely from usages and customs of immemorial antiquity or from the judgement and decrees of courts.

COMMUTATION: The change of a punishment from a greater degree to a lesser degree, as from death to life imprisonment.

COMPARATIVE NEGLIGENCE: The doctrine by which acts of the opposing parties are compared to determine the proportion of liability which each shares from the injury which is the basis of the action.

COMPETENCY: In the law of evidence the presence of those characteristics which render a witness legally fit and qualified to give testimony.

COMPLAINANT: Synonymous with "plaintiff."

COMPLAINT: The first or initiatory pleading on the part of the complainant, or plaintiff, in a civil action.

CONCURRENT SENTENCE: Sentences for more than one crime in which the time of each is to be served concurrently, rather than successively.

CONTEMPT OF COURT: Any act calculated to embarrass, hinder, or obstruct a court in the administration of justice, or calculated to lessen its authority or dignity. Contempts are of two kinds: direct and indirect. Direct contempts are those committed in the immediate presence of the court; indirect is the term chiefly used with reference to the failure or refusal to obey a lawful order.

CONTRACT: An exchange of oral or written promises between two or more parties to do or not to do a particular thing, enforceable by law.

CONTRIBUTORY NEGLIGENCE: A doctrine which prohibits recovery of damages by a plaintiff whose own behavior contributed even slightly to the event which caused the plaintiff's injuries--as distinguished from comparative negligence.

CONVICTION: Being found guilty of a crime or misdemeanor.

CORPUS DELICTI: The object or thing upon which a crime has been committed, e.g., a body of a murdered person, the charred shell of a burned house.

CORROBORATING EVIDENCE: Additional evidence which tends to strengthen or confirm evidence already given.

COUNTERCLAIM: A claim presented by a defendant in opposition to the claim of a plaintiff.

COURTS OF RECORD: Those whose proceedings are permanently recorded, and which have the power to fine or imprison for contempt. Courts not of record are those of lesser authority whose proceedings are not permanently recorded.

COURT REPORTER: The one who makes a permanent record of all the court's proceedings.

COURT TRIAL: A trial without a jury, where the judge is the trior of fact.

CROSS EXAMINATION: The questioning of a witness in a trial, or in the taking of a deposition, by the party opposed to the one who produced the witness.

CUMULATIVE SENTENCE: Sentences for two or more crimes to run successively rather than concurrently.

D

DAMAGES: Compensation recoverable in court by one who has suffered loss, detriment or injury to his person, property or rights due to the unlawful acts or negligence of others.

DE FACTO: In fact. In reality.

DE JURE: As a result of law, as a result of official action.

DE NOVO: Anew, afresh. A "trial de novo" is a retrial.

DECLARATORY JUDGEMENT: One which declares the rights of the parties or expresses the opinion of the court on a question of law, without necessarily ordering anything to be done.

DECREE: A decision or order of the court. A final decree is one which fully and finally disposes of the litigations; and interlocutory decree is a provisional or preliminary decree which is not final.

DEFAULT: A "default" in action of law occurs when a defendant omits to plead within the time allowed of fails to appear at trial.

DEFENDANT: In a civil action, the party denying or defending itself against charges brought by a plaintiff. In a criminal action, the person indicted for an offense.

DEMUR: To file a pleading (called "a demurrer") admitting the truth of the facts in the complaint or answer, but contending they are legally insufficient.

DEPOSITION: The testimony of a witness, not taken in open court, in pursuance of authority given by statute or rule of court to take testimony elsewhere.

DICTA: Opinions of a judge that are not a central part of the judge's decision.

DIRECT EVIDENCE: Proof of facts by witnesses who saw acts done or heard words spoken, as distinguished from circumstantial evidence, which is called indirect.

DIRECT EXAMINATION: The first interrogation of a witness by the party on whose behalf he or she is called.

DIRECTED VERDICT: An instruction by the judge to the jury to return a specific verdict.

DISCOVERY: A proceeding whereby one party to an action may be informed as to facts known by other parties or witnesses.

DISMISSAL WITHOUT PREJUDICE: Permits the complainant to sue again on the same cause of action, while dismissal "with prejudice" bars the right to bring or maintain an action on the same claim or cause.

DISSENT: A term commonly used to denote the disagreement of one or more judges of a court with the decision of the majority.

DOCKET: Schedule of different court proceedings.

DOUBLE JEOPARDY: Common law and Constitutional prohibition against more than one prosecution for the same crime, transaction or omission.

DUE PROCESS: Law in its regular course of administration through the courts of justice. The guarantee of due process requires that every person have the protection of a fair trial.

E

EN BANC: In the bench. Full bench. A session where the entire membership of the Court will participate in the decision rather than the regular quorum.

ENJOIN: To acquire a person, by writ of injunction from a court of equity, to perform, or to abstain or desist from some act.

ENTRAPMENT: The act of officers or agents of a government in inducing a person to commit a crime not contemplated by him, for the purpose of instituting a criminal prosecution against him.

EQUITY: Justice administered according to fairness as contrasted with the strictly formulated rules of common law.

ERGO: Therefore.

ERROR, WRIT OR: A writ issued from an appeals court to a lower court requiring it to send to the appeals court the record of a case in which it has entered a final judgement and which the appeals court will now review for error.

ESCHEAT: The right of the state to appropriate property to which no one else has a valid claim..

ESCROW: A writing, deed, fund, or object delivered by one person to another to be held until specified acts are performed or certain conditions are met, and then to be disposed of as directed under the terms of the escrow.

ESTOPPEL: A person's own act, or acceptance of facts, which preclude his later making claims to the contrary.

ET AL.: An abbreviation of *et alii*, meaning "and others."

ET SEQ.: An abbreviation for *et sequentes*, or *et sequentia*, meaning "and the following."

EX CONTRACTU: In both civil and common law, rights and causes of action are divided into two classes: those arising ex contractu (from a contract) and ex delicto (from a wrong or tort).

EX DELICTO: Rights and causes of action arising from a wrong or "tort".

EX PARTE: By or for one party; done for, in behalf of or on the application of, one party only without notice to the other.

EX POST FACTO: After the fact; an act of fact occurring after some previous act or fact, and relating thereto.

EX REL.: Upon information from; usually used to describe legal proceedings begun by an official in the name of the state, but at the instigation of, and with information from, a private individual interested in the matter.

EXCEPTION: A formal objection to an action of the court during the trial of a case, in refusing a request or overruling an objection; implying that the party excepting does not acquiesce in the decision of the court, but will seek to procure its reversal.

EXHIBIT: A paper, document or other article produced and exhibited to a court during a trial or hearing.

EXPERT EVIDENCE: Testimony given in relation to some specific, technical, or professional matter by experts, i.e., persons qualified to speak authoritatively by reason of their special training, skill, or familiarity with the subject.

EXTENUATING CIRCUMSTANCES: Circumstances which render a crime less aggravated, heinous, or reprehensible than would otherwise be.

F

FAIR PREPONDERANCE: Evidence sufficient to create in the minds of the triors of fact the belief that the party which bears the burden of proof has established its case.

FALSE ARREST: Any unlawful physical restraint of another person, in prison or elsewhere.

FALSE PRETENSES: Misrepresentation in order to obtain another's money or goods.

FELONY: A crime of a graver nature than a misdemeanor. Generally, an offense punishable by death or imprisonment in excess of one year.

FIDUCIARY: A trustee; one who has the duty to act primarily for the benefit of another with respect to the subject matter of the trust.

FRAUD: An intentional perversion of truth; deceitful practice of device resorted to with intent to deprive another of some property or other right, or in some manner to do him injury.

G

GENERAL DEMURRER: A demurrer which raises the question whether the pleading against which it is directed lacks the definite allegations essential to the cause of action, or defense.

GRAND JURY: A jury of inquiry whose duty is to receive complaints and accusations in criminal cases, hear evidence and find bills of indictment in cases where they are satisfied that there is probable cause that a crime was committed, and that a trial ought to be held.

GUARDIAN AD LITEM: A person appointed by the court to look after the interest of an infant of incompetence whose property is involved in litigation.

H

HABEAS CORPUS: "You have the body." The name given a variety or writs whose object is to bring a person before a court or judge. In most common usage, it is directed to the official or person detaining another, commanding him to produce the body of the prisoner or person detained so the court may determine if such a person has been denied his liberty without due process of the law.

HARMLESS ERROR: In appellate practice, an error committed by a lower court during a trial, but not prejudicial to the rights of the party and for which the court will not reverse the judgement.

HEARSAY: Evidence not proceeding from the personal knowledge of the witness.

HYPOTHETICAL QUESTION: A combination of facts and circumstances, assumed or proved, stated in such a form as to constitute a coherent state of facts upon which the opinion of an expert can be asked by way of evidence in a trial.

I

IMPEACHMENT OF WITNESS: An attack on the credibility of a witness, as by the testimony of other witnesses or evidence of prior bad conduct or criminal convictions.

IMPLIED CONTRACT: A contract in which the promise made by the obligor is not expressed, but inferred by his conduct or implied in law.

IMPUTED NEGLIGENCE: Negligence which is not directly attributable to the person himself, but which is the negligence of a person who is in privity (has a particular legal relationship) with him, and with whose fault he is chargeable.

IN CAMERA: In chambers; in private.

IN RE: In the affair of, concerning. Frequent title of judicial proceedings in which there are no adversaries, but rather where the matter itself requires judicial action.

INADMISSIBLE: That which, under the established rules of evidence, cannot be admitted or received.

INDETERMINATE SENTENCE: An indefinite sentence of "not less than" and "not more than" so many years, the exact term to be served being determined by parole authorities within the minimum and maximum limits set by the Court or by statute.

INDICTMENT: An accusation in writing found and presented by a grand jury, charging that a person therein named has done some act, or been guilty of some omission, which by law, is a crime.

INFORMATION: An accusation of some criminal offense, in the nature of an indictment, but which is presented by a competent public officer instead of a grand jury.

INFRACTION: The breaking of a minor law; usually traffic laws in which no imprisonment may be imposed.

INJUNCTION: A mandatory or prohibitive writ issued by a court.

INSTRUCTION: A direction given by the judge to the jury concerning the law of the case.

INTER ALIA: Among other things or matters.

INTER ALIOS: Among other persons; between others.

INTERLOCUTORY: Provisional; temporary; not final. Refers to orders and decrees of a court.

INTERROGATORIES: Written questions propounded by one party and served on an adversary, who must provide written answers under oath.

INTESTATE: One who dies without leaving a will.

IRRELEVANT: Evidence not relating or applicable to the matter in issue; not supporting the issue.

ISSUE OF FACT: Arises when a fact is maintained by one party and is controverted by the other in the pleadings.

ISSUE OF LAW: Arises where evidence is undisputed and only one conclusion can be drawn there from.

J

JURAT: A clause in an affidavit or information stating when, where and before whom the document was sworn to or affirmed.

JURISDICTION: The power of the court to hear a case in question, which exists when the proper parties are present, and when the point to be decided is within the issues authorized to be handled by the particular court.

JURY: A certain number of persons selected according to law, and sworn to inquire of certain matters of fact, and declare the truth upon evidence laid before them.

JURY TRIAL: A trial where a group of citizens hears the evidence presented and gives its verdict.

L

LEADING QUESTION: One which instructs a witness how to answer or puts into his mouth words to be echoed back; one which suggests to the witness the answer desired. Prohibited on direct examination.

LIMITATION: A certain time allowed by statute in which litigation must be brought.

LIS PENDENS: A pending suit. Also, a lien on property.

LOCUS DELICTI: The place of the offense.

M

MALFEASANCE: Evil doing; ill conduct; the commission of some act which is positively prohibited by law.

MANDAMUS: The name of writ which issues from a court of superior jurisdiction, directed to an inferior court or to a public officer, commanding the performance of a particular act.

MANDATE: A judicial command or precept proceeding from a court or judicial officer, directing the proper officer to enforce a judgement, sentence or decree.

MANSLAUGHTER: The unlawful killing of another without malice; may be either voluntary upon a sudden impulse, or involuntary in the commission of some unlawful act.

MISDEMEANOR: Offense less than a felony; generally those punishable by fine or imprisonment for a term of one year or less.

MISFEASANCE: A misdeed or trespass; the improper performance of some act which a person may lawfully do.

MISTRIAL: An erroneous or invalid trial; a trial which cannot stand in law because of lack of jurisdiction, wrong drawing of jurors, or disregard of some other fundamental requisite.

MITIGATING CIRCUMSTANCE: Such as do not constitute a justification or excuse for an offense, but which may be considered as reducing the degree of moral culpability.

MOOT: Unsettled; undecided; not necessary to be decided. A moot point is one not settled by judicial decisions.

MORAL TURPITUDE: Conduct contrary to honesty, modesty, or good morals.

MULTIPLICITY OF ACTIONS: Numerous and unnecessary attempts to litigate the same right.

MURDER: The unlawful killing of a human being by another with malice aforethought, either expressed or implied.

N

NE EXEAT: A writ which forbids the person to whom it is addressed to leave the country, the state, or the jurisdiction of the court.

NEGLIGENCE: The failure to do something which a reasonable person, guided by ordinary considerations would do; or the doing of something which a reasonable and prudent person would not do.

NISI PRIUS: Courts for the initial trial of issues of fact, as distinguished from appellate Courts.

NO BILL: This phrase, endorsed by a grand jury on the indictment, is equivalent to "not found" or "not a true bill." It means that, in the opinion of the jury, evidence was insufficient to warrant the return of a formal charge.

NOLLE PROSEQUI: A formal entry upon the record by the plaintiff in a civil suit.

NOLO CONTENDERE: A pleading, usually used by defendants in criminal cases, which literally means "I will not contest it."

NON COMPOS MENTIS: Not sound of mind; insane.

NON OBSTANTE VEREDICTO: Notwithstanding the verdict. A judgement entered by order of court for one party, although there has been jury verdict against him.

O

OBJECTION: The act of taking exception to some statement or procedure in trial. Used to call the court's attention to improper evidence or procedure.

OF COUNSEL: A phrase commonly applied to counsel employed to assist in the preparation of management of the case, or its presentation on appeal, but who is not the principal attorney of record.

OPINION EVIDENCE: Evidence of what the witness thinks, believes, or infers in regard to facts in dispute, as distinguished from his personal knowledge of the facts; not admissible except (under certain limitations) in the case of experts.

OUT OF COURT: One who has no legal status in court is said to be "out of court," i.e., he is not before the court. For example, when a plaintiff, by some act of omission or commission, shows that he is unable to maintain his action, he is frequently said to have put himself "out of court."

P

PANEL: A list of jurors to serve in a particular court, or for the trial of a particular action: denotes either the whole body of persons summoned as jurors for a particular term of court or those selected by the clerk by lot.

PAROLE: The conditional release from prison of a convict before the expiration of his sentence. If he observes the conditions, the parolee need not serve the remainder of his sentence.

PARTIES: The persons who are actively concerned in the prosecution or defense of a legal proceeding.

PER CURIAM: "By the court." An unsigned opinion of the court or an opinion written by the whole court.

PERSONAL RECOGNIZANCE: When a person is released from custody before trial on his/her promise to return for the trial.

PETIT JURY: The ordinary jury of twelve (or fewer) persons for the trial of a civil or criminal case. So called to distinguish it from the grand jury.

PETITIONER: One who files a petition with a court seeking action or relief. When a writ of certiorari is granted by the Supreme Court, the parties to the case are called petitioner and respondent in contrast to appellant and appellee used in an appeal.

PLAINTIFF: A person who brings a civil action; the party who complains or sues.

PLEADING: The process by which the parties in a suit or action alternately present written statements of their contentions, each responsive to that which precedes, and each serving to narrow the field of controversy until there evolves one or more points affirmed on one side and denied on the other, called the issue upon which they then go to trial.

POLLING THE JURY: Asking jurors individually whether they assented and still assent to the verdict announced by the foreman.

POWER OF ATTORNEY: Authorization for one person to act as another's agent or attorney.

PRAECIPE: An original writ commanding the defendant to do the thing required; also, an order addressed to the clerk of a court requesting him to issue a particular writ.

PRE-SENTENCE INVESTIGATION: An investigation, after a guilty verdict, to provide the court with background information to help in determining the sentence.

PREEMPTORY CHALLENGE: The right of parties in criminal and civil cases to dismiss a prospective juror without giving any reason. The number of such challenges is limited by statute.

PREJUDICIAL ERROR: Synonymous with "reversible error"; an error which warrants the appellate court to reverse the judgement before it.

PRELIMINARY HEARING: Synonymous with "preliminary examination"; the hearing given a person charged with a crime by a magistrate or judge to determine whether he should be held for trial. Since the Constitution states that a person cannot be accused in secret, a preliminary hearing is open to the public unless the defendant requests that it be closed. The accused person must be present at this hearing and must be accompanied by an attorney.

PREPONDERANCE OF EVIDENCE: The greater weight (in terms of quality not quantity) of evidence, or that evidence which is more believable and convincing.

PRESUMPTION OF FACT: An inference as to the truth or falsity of any proposition of fact, drawn by a process of reasoning in the absence of actual certainty of its truth or falsity, or until such certainty can be ascertained.

PRESUMPTION OF LAW: A rule of law that courts and judges shall draw a particular inference from a particular fact, or from particular evidence.

PRIMA FACIE: At first sight; referring to a fact or other evidence presumably sufficient to establish a defense or a claim unless otherwise contradicted.

PRO SE: For himself, in his or her own behalf.

PROBATE: The act or process of providing a will.

PROBATION: A sentence of being placed under the jurisdiction of probation officers for a set time instead of going to prison.

PROSECUTOR: A public officer whose duty is the prosecution of criminal proceedings on behalf of the people.

PUBLIC DEFENDER: Lawyers employed by the state to represent defendants accused of crimes who cannot afford to hire their own lawyer.

R

REASONABLE DOUBT: An accused person is entitled to acquittal if, in the minds of the jury, guilt has not been proven beyond a "reasonable doubt"; that state of mind of jurors in which they cannot say they feel an abiding conviction as to the truth of the charge.

REBUTTAL: The introduction of answering evidence; proof by one party disputing proof provided by its adversary; also, the stage of a trial when such evidence is introduced.

REDIRECT EXAMINATION: Follows cross-examination and is exercised by the party who first examined the witness.

REFEREE: A person to whom a cause pending in a court is referred by the court to take testimony, hear the parties, and report therein to the court. An officer exercising judicial powers and who functions as an arm of the court for a specific purpose.

REMAND: To send back. In the even of a decision being remanded, it is sent back by a higher court to the court from which it came for further action.

REMOVAL, ORDER OF: An order by a court directing the transfer of a cause to another court.

REPLEVIN: An action whereby the owner or person entitled to repossession of goods or chattels may recover those goods or chattels from one who has wrongfully taken or who wrongfully detains such goods or chattels.

REPLY: When a case is tried or argued in court, the argument of the plaintiff in answer to that of the defendant. A pleading in response to an answer.

REST: A party is said to "rest" or "rest his case" when he has presented all the evidence he intends to offer.

RESTITUTION: The restoring of goods or money to the victim of a crime by the offender.

RETAINER: Act of the client in employing his attorney or counsel; also, denotes the fee which the client pays when he retains the attorney to act for him.

RIPE: A case is ready for the U.S. Supreme Court if the legal issues involved are clear enough and well evolved and presented so that a clear decision can come out of the case.

RULE NISI, OR RULE TO SHOW CAUSE: A court order obtained on motion by either party to show cause why the particular relief sought should not be granted.

RULE OF COURT: An order made by a court having competent jurisdiction. Rules of court are either general or special; the former are the regulations by which the practice of the court is governed; the latter are special orders made in particular cases.

S

SEARCH AND SEIZURE, UNREASONABLE: In general, an unlawful search of one's premises or of his person; a search which is unreasonably oppressive in its invasion of privacy.

SEARCH WARRANT: A written order from a justice or magistrate directing an officer to search a specific place for a specific object, issued upon a showing of probable cause.

SELF-DEFENSE: The protection of one's person or property against some injury attempted by another. The law of "self-defense" justifies an act done in the reasonable belief of immediate danger. When acting in justifiable self-defense, a person may not be punished criminally nor held responsible for civil damages.

SEPARATION OF WITNESSES: An order of the court requiring all witnesses to remain outside the courtroom until each is called to testify, except the plaintiff or defendant.

SHERIFF: An officer of a county whose principal duties are to aid the criminal and civil courts and act as chief preserver of the peace in many places. Sheriffs serve processes, summon juries, execute judgements, and hold judicial sales.

SINE QUA NON: Indispensable; that without which something cannot be.

STANDING: A person's right to bring a lawsuit because he or she is directly affected by the issue raised.

STARE DECISIS: A doctrine that, when a court has once laid down a principle of law as applicable to a certain set of facts, it will adhere to that principle and apply it to future cases where the facts are substantially the same.

STATE'S ATTORNEY: Same as prosecutor.

STATE'S EVIDENCE: Testimony given by an accomplice or participant in a crime tending to convict others.

STATUTE: The written law in contradistinction to the unwritten law.

STAY: A stopping or arresting of a judicial proceeding by order of the court.

STIPULATION: An agreement by attorneys on opposite sides of a case as to any matter pertaining to the proceedings or trial. It is not binding unless assented to by the parties; most stipulations must be in writing.

SUBPOENA: A process to cause a witness to appear and give testimony before a court or magistrate.

SUBPOENA DUCES TECUM: A process by which the court commands a witness to produce certain documents or records in a trial.

SUBSTANTIVE LAW: The law dealing with rights, duties, and liabilities as distinguished from adjective law, which is the law regulating procedure.

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SUMMONS: A notification to the named person that an action has been commenced against him in court and that he is required to appear, on the day named, and answer the complaint in such action.

T

TESTATOR OR TESTATRIX: The maker of a written will. A person who dies without leaving a written will dies "intestate."

TESTIMONY: Evidence given by a competent witness, under oath; as distinguished from evidence derived from writings and other sources.

TORT: An injury or wrong committed, either with or without force, to the person or property of another.

TRANSCRIPT: The official record of proceedings in a trial or hearing.

TRIAL DE NOVO: A new trial or retrial held in a higher court in which the whole case is gone into as if no trial had been held in a lower court.

TRUE BILL: In criminal practice, the endorsement made by a grand jury upon a bill of indictment when they find sufficient evidence to warrant a criminal charge.

U

UNDUE INFLUENCE: Whatever destroys free will and causes a person to do something he would not do if left to himself.

UNLAWFUL DETAINER: A retention or withholding of real estate without the consent of the owner or other person entitle dot its possession.

V

VACATE: To make void, annul or rescind.

VENIRE: Technically, a writ summoning persons to court to act as jurors; popularly used as meaning the body of names thus summoned.

VENIREMEN: Members of a panel of jurors.

VENUE: The particular county, city or geographical area in which a court with jurisdiction may hear an determine a case.

VERDICT: In practice, the formal decision or finding made by a jury, reported to the court and accepted by it.

VOIR DIRE: To speak the truth. The phrase denotes the preliminary examination which the court may make of one presented as a witness or juror, as to his qualifications.

W

WAIVE: To give up right or claim voluntarily.

WAIVER OF IMMUNITY: A means authorized by statutes by which a witness, in advance of giving testimony or producing evidence, may renounce the fundamental right guaranteed by the Constitution that no person shall be compelled to be a witness against himself, frequently demanded of a public official.

WARRANT OF ARREST: A writ by a magistrate, justice or other competent authority, to a sheriff or other officer, requiring him to arrest a person therein named and bring him before the magistrate of court to answer to a specified charge.

WEIGHT OF EVIDENCE: The balance of preponderance of evidence; the inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other.

WITH PREJUDICE: The term, as applied to judgement of dismissal, which makes the disposition of the case as conclusive of rights of the parties as if action had been prosecuted to final adjudication adverse to the plaintiff.

WITHOUT PREJUDICE: A dismissal "without prejudice" allows a new suit to be brought on the same cause of action.

WITNESS: One who testifies to what he or she has seen, heard, or otherwise observed.

WRIT: An order issuing from a court of justice and requiring the performance of an specified act, or giving authority and commission to have it done.

WRIT OF ERROR CORAM NOBIS: A common law writ, the purpose of which is to correct a judgement in the same court in which it was rendered, on the ground of error of fact.